



STATE OF TENNESSEE
DEPARTMENT OF MILITARY
TENNESSEE EMERGENCY MANAGEMENT AGENCY

3041 Sidco Dr.
Military Joint Force Headquarters
Nashville, Tennessee 37204
Phone (615) 741-0001

Major General Jeffrey Holms
The Adjutant General
Commissioner

Patrick Sheehan
TEMA Director

MEMORANDUM

TO: Krista Lee Carsner, Executive Director
Fiscal Review Committee Members

FROM: Patrick Sheehan, Director, Tennessee Emergency Management Agency

DATE: August 17, 2021

SUBJECT: Sole Source Contract Request for WebEOC Managed Hosting Project

Tennessee Emergency Management Agency (TEMA) submits for consideration by the Fiscal Review Committee, the initial Sole Source Contract Request for WebEOC Managed Hosting Project. The current contractor for this project is ESi Acquisitions (also known as Juvare). Through this contract, we are requesting to initiate a new contract with the vendor for 3 years of continuing services and support. The current contract with the vendor expired June 30, 2021. The services provided by the contractor were for applications installed within the State's datacenter and managed by Strategic Technologies Solutions (STS) and supported by the contractor. The new contract would engage the services of the contractor to host the application within their Azure Cloud (Microsoft Cloud) environment.

The WebEOC program is utilized by TEMA to manage day-to-day operations and the response to disasters and catastrophic events. State and local partners routinely provide situational awareness of events and convey life safety, property preservation and logistical needs to the state emergency operations center (SEOC) through the use of this system.

The WebEOC application and server is currently hosted on site at the STS Data Center and the contract for maintenance and support has expired. The new version of the program will be hosted in a cloud environment to provide always on redundancy as well as a backup to be hosted locally

within the TEMA Data Center. A back-up server will be utilized on site in Nashville to provide redundancy in case of loss of network connectivity. Once connectivity is reestablished, the data stored locally would be exported to the WebEOC Cloud environment and merged with the live data. During a loss of local connectivity at the primary SEOC, the WebEOC application would continue to function for anyone not impeded by network outages, including all state, local, county, and federal entities that rely on the service during critical incidents or exercise events.

The contract proposal will be for three years and will cost \$293,628.

ESi 3-Years Contract:\$293,628

A sole source contract is needed for the system since this will provide continuity and familiarity of the system and data currently utilized during the perpetual state of emergency since March 2020 and the numerous disasters that are currently being mitigated including, but not limited to tornadoes, floods, and COVID response. ESi is the sole developer and licensor of the WebEOC software and is the only entity with access to the software source code.

During 2019/20, TEMA explored the option of moving to an alternative vendor for the product and determined to remain with their current vendor. Three vendors were demonstrated and reviewed: CloudEOC, Veoci, and DisasterLAN. ESi is the sole developer and licensor of the WebEOC software and is the only entity with access to the software source code. Using an alternative vendor would not be cost effective due to the current perpetual state of emergency due to tornadoes, floods, and COVID response.

A future project to review alternative solutions is planned but is anticipated to require 18 to 24 months to properly review due to the complex nature of the incident response applications and the inherent risks to the public in the event of a catastrophic failure of the system.

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Jason Laney	*Contact Phone:	615-946-4757
*Presenter's name(s):	Patrick Sheehan, TEMA Director; Craig Hanrahan, Director of Operations; Kevin Lauer		
Edison Contract Number: <i>(if applicable)</i>		RFS Number: <i>(if applicable)</i>	
*Original or Proposed Contract Begin Date:	11/01/2021	*Current or Proposed End Date:	10/31/2024
Current Request Amendment Number: <i>(if applicable)</i>		N/A	
Proposed Amendment Effective Date: <i>(if applicable)</i>		N/A	
*Department Submitting:		Military	
*Division:		TEMA	
*Date Submitted:		08/17/2021	
*Submitted Within Sixty (60) days:		Yes	
<i>If not, explain:</i>			
*Contract Vendor Name:		ESi Acquisitions Inc	
*Current or Proposed Maximum Liability:		\$ 2 9 3 , 6 2 8	
*Estimated Total Spend for Commodities:			
*Current or Proposed Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2022	FY: 2023	FY: 2024	FY: FY FY
\$ 125,236	\$ 82,952	\$ 85,440	\$ \$ \$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from Edison)</i>			
FY:	FY:	FY:	FY: FY FY
\$	\$	\$	\$ \$ \$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		N/A	
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A	
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A	

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:			
State:	\$ 1 4 6 , 8 1 4	Federal:	\$ 1 4 6 , 8 1 4
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>			
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		\$ 2 9 3 , 6 2 8 Costs were determined by the services required to maintain the existing capability added with the resiliency of the cloud infrastructure and solutions provided.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		During 2019/20, TEMA explored the option of moving to an alternative vendor for the product and determined to remain with their current vendor. Three vendors were demonstrated and reviewed: CloudEOC, Veoci, and DisasterLAN. ESI is the sole developer and licensor of the WebEOC software and is the only entity with access to the software source code. Using an alternative vendor would not be cost effective due to the current perpetual state of emergency due to tornadoes, floods, and COVID response.	



**STATE OF TENNESSEE, DEPARTMENT OF GENERAL SERVICES
CENTRAL PROCUREMENT OFFICE**

Agency Term Contract Multi-Year - Issued to:

Esi Acquisition Inc
235 Peachtree St NE Ste 2300
Atlanta GA 30303

Vendor ID: 0000000808

CONTRACT NUMBER: 000000000000000000071689

TITLE: WebEOC

START DATE: November 01, 2021 END DATE: October 31, 2024

Contract Contact Information:

State of Tennessee
Department of General Services, Central Procurement Office
Contract Administrator: Crystal M Lysinger
3rd Floor, William R Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
Phone: 615-313-0691

Line Information

Line 1

Item ID: 1000195293
WebEOC Professional, ASP Hosting, < 250 Users, Year 1
Unit of Measure: EA
Vendor Item/Part #: 103-H-PRO-250, YR-1
Manufacturer Item #:
Unit Price: \$ 8635

Line 2

Item ID: 1000195294
WebEOC Fusion, ASP Hosting, Year 1
Unit of Measure: EA
Vendor Item/Part #: 103-H-FUS-1, YR-1
Manufacturer Item #:
Unit Price: \$ 18150

Line 3

Item ID: 1000195295

WebEOC Maps, ASP Hosting, Add On, Year 1

Unit of Measure: EA

Vendor Item/Part #: 103-H-MAP-1, YR-1

Manufacturer Item #:

Unit Price: \$ 4345

Line 4

Item ID: 1000195296

ArcGIS Extension, Year 1

Unit of Measure: EA

Vendor Item/Part #: 101-T-AGIS-1, YR-1

Manufacturer Item #:

Unit Price: \$ 13200

Line 5

Item ID: 1000195297

Maintenance, Fusion, Year 1

Unit of Measure: EA

Vendor Item/Part #: 102-T-FUS-1, YR-1

Manufacturer Item #:

Unit Price: \$ 18150

Line 6

Item ID: 1000195298

Maintenance, Resource Request and Deployment Manager, Year 1

Unit of Measure: EA

Vendor Item/Part #: 102-T-RRDM-1, YR-1

Manufacturer Item #:

Unit Price: \$ 3836

Line 7

Item ID: 1000195299

Maintenance, WebEOC Professional Disaster Recovery, Year 1

Unit of Measure: EA

Vendor Item/Part #: 102-T-DR-PRO, YR-1

Manufacturer Item #:

Unit Price: \$ 2200

Line 8

Item ID: 1000195300

Maintenance, ArcGIS Extension, Year 1

Unit of Measure: EA

Vendor Item/Part #: 102-T-AGIS-1, YR-1

Manufacturer Item #:

Unit Price: \$ 1980

Line 9

Item ID: 1000195301

Professional Services, WebEOC, ArcGIS Extension, On Prem Implementation, Year 1

Unit of Measure: EA

Vendor Item/Part #: 700-P-PMAGE-1, YR-1

Manufacturer Item #:

Unit Price: \$ 4000

Line 10

Item ID: 1000195302

WebEOC Non-Production Instance, Client Hosted (WebEOC instance will be fused to hosted WebEOC instance for backup purposes only), Year 1

Unit of Measure: EA

Vendor Item/Part #: 101-T-NPI-2, YR-1

Manufacturer Item #:

Unit Price: \$ 7500

Line 11

Item ID: 1000195303

Maintenance, WebEOC Non-Production Instance, Client Hosted, Year 1

Unit of Measure: EA

Vendor Item/Part #: 102-T-NPI2, YR 1

Manufacturer Item #:

Unit Price: \$ 1650

Line 12

Item ID: 1000195304

Maintenance, Maps Add-On, Perpetual, Year 1

Unit of Measure: EA

Vendor Item/Part #: 102-P-MAP-1, YR-1

Manufacturer Item #:

Unit Price: \$ 4290

Line 13

Item ID: 1000195305

Maintenance, WebEOC Software, Year 1

Unit of Measure: EA

Vendor Item/Part #: 102-P-LEG, YR-1

Manufacturer Item #:

Unit Price: \$ 14100

Line 14

Item ID: 1000195306

Professional Services, Solutions Services Project, Other/Multi-Product, Set up ASP Hosted WebEOC & Fusion Environments (Hosted WebEOC Production and On-Premises WebEOC Backup Copy), Backup not automated, Year 1

Unit of Measure: EA

Vendor Item/Part #: 700-P-SSP-2, YR-1

Manufacturer Item #:

Unit Price: \$ 20000

Line 15

Item ID: 1000195307

Database Storage, Block ASP, 25 GB, Year 1

Unit of Measure: EA

Vendor Item/Part #: 102-H-25GB-1, YR-1

Manufacturer Item #:

Unit Price: \$ 800

Line 16

Item ID: 1000195308

WebEOC Professional, ASP Hosting, < 250 Users, Year 2

Unit of Measure: EA

Vendor Item/Part #: 103-H-PRO-250, YR-2

Manufacturer Item #:
Unit Price: \$ 8894.05

Line 17

Item ID: 1000195309
WebEOC Fusion, ASP Hosting, Year 2
Unit of Measure: EA
Vendor Item/Part #: 103-H-FUS-1, YR-2
Manufacturer Item #:
Unit Price: \$ 18694.5

Line 18

Item ID: 1000195310
WebEOC Maps, ASP Hosting, Add On, Year 2
Unit of Measure: EA
Vendor Item/Part #: 103-H-MAP-1, YR-2
Manufacturer Item #:
Unit Price: \$ 4475.35

Line 19

Item ID: 1000195311
Maintenance, Fusion, Year 2
Unit of Measure: EA
Vendor Item/Part #: 102-T-FUS-1, YR-2
Manufacturer Item #:
Unit Price: \$ 18694.5

Line 20

Item ID: 1000195312
Maintenance, Resource Request and Deployment Manager, Year 2
Unit of Measure: EA
Vendor Item/Part #: 102-T-RRDM-1, YR-2
Manufacturer Item #:
Unit Price: \$ 3951.08

Line 21

Item ID: 1000195313
Maintenance, WebEOC Professional Disaster Recovery, Year 2
Unit of Measure: EA
Vendor Item/Part #: 102-T-DR-PRO, YR-2
Manufacturer Item #:
Unit Price: \$ 2266

Line 22

Item ID: 1000195314
Maintenance, ArcGIS Extension, Year 2
Unit of Measure: EA
Vendor Item/Part #: 102-T-AGIS-1, YR-2
Manufacturer Item #:
Unit Price: \$ 2039.4

Line 23

Item ID: 1000195315
Maintenance, WebEOC Non-Production Instance, Client Hosted, Year 2
Unit of Measure: EA
Vendor Item/Part #: 102-T-NPI2, YR 2

Manufacturer Item #:
Unit Price: \$ 1699.5

Line 24

Item ID: 1000195316
Maintenance, Maps Add-On, Perpetual, Year 2
Unit of Measure: EA
Vendor Item/Part #: 102-P-MAP-1, YR-2
Manufacturer Item #:
Unit Price: \$ 4418.7

Line 25

Item ID: 1000195317
Maintenance, WebEOC Software, Year 2
Unit of Measure: EA
Vendor Item/Part #: 102-P-LEG, YR-2
Manufacturer Item #:
Unit Price: \$ 14523

Line 26

Item ID: 1000195318
Database Storage, Block ASP, 25 GB, Year 2
Unit of Measure: EA
Vendor Item/Part #: 102-H-25GB-1, YR-2
Manufacturer Item #:
Unit Price: \$ 824

Line 27

Item ID: 1000195319
WebEOC Professional, ASP Hosting, < 250 Users, Year 3
Unit of Measure: EA
Vendor Item/Part #: 103-H-PRO-250, YR-3
Manufacturer Item #:
Unit Price: \$ 9160.87

Line 28

Item ID: 1000195320
WebEOC Fusion, ASP Hosting, Year 3
Unit of Measure: EA
Vendor Item/Part #: 103-H-FUS-1, YR-3
Manufacturer Item #:
Unit Price: \$ 19255.34

Line 29

Item ID: 1000195321
WebEOC Maps, ASP Hosting, Add-On, Year 3
Unit of Measure: EA
Vendor Item/Part #: 103-H-MAP-1, YR-3
Manufacturer Item #:
Unit Price: \$ 4609.61

Line 30

Item ID: 1000195322
Maintenance, Fusion, Year 3
Unit of Measure: EA
Vendor Item/Part #: 102-T-FUS-1, YR-3

Manufacturer Item #:
Unit Price: \$ 19255.34

Line 31

Item ID: 1000195323
Maintenance, Resource Request and Deployment Manager, Year 3
Unit of Measure: EA
Vendor Item/Part #: 102-T-RRDM-1, YR-3
Manufacturer Item #:
Unit Price: \$ 4069.61

Line 32

Item ID: 1000195324
Maintenance, WebEOC Professional Disaster Recovery, Year 3
Unit of Measure: EA
Vendor Item/Part #: 102-T-DR-PRO, YR-3
Manufacturer Item #:
Unit Price: \$ 2333.98

Line 33

Item ID: 1000195325
Maintenance, Maps Add-On, Perpetual, Year 3
Unit of Measure: EA
Vendor Item/Part #: 102-P-MAP-1, YR-3
Manufacturer Item #:
Unit Price: \$ 4551.26

Line 34

Item ID: 1000195326
Maintenance, WebEOC Software, Year 3
Unit of Measure: EA
Vendor Item/Part #: 102-P-LEG, YR-3
Manufacturer Item #:
Unit Price: \$ 14958.69

Line 35

Item ID: 1000195327
Maintenance, ArcGIS Extension, Year 3
Unit of Measure: EA
Vendor Item/Part #: 102-T-AGIS-1, YR-3
Manufacturer Item #:
Unit Price: \$ 2100.58

Line 36

Item ID: 1000195328
Maintenance, WebEOC Non-Production Instance, Client Hosted, Year 3
Unit of Measure: EA
Vendor Item/Part #: 102-T-NPI2, YR 3
Manufacturer Item #:
Unit Price: \$ 1750.49

Line 37

Item ID: 1000195329
Database Storage, Block ASP, 25 GB, Year 3
Unit of Measure: EA
Vendor Item/Part #: 102-H-25GB-1, YR-3

Manufacturer Item #:
Unit Price: \$ 848.72

APPROVED: _____ BY: _____
CHIEF PROCUREMENT OFFICER PURCHASING AGENT DATE



March 31, 2021

Via Email

State of Tennessee Military Department
3041 Sidco Drive, Dock 154
Nashville, TN 37204
Attn: Jason Laney

RE: Response to Sole Source Inquiry; WebEOC® Software Suite – State of Tennessee Military Department

Dear Mr. Laney,

ESi Acquisition, Inc., a Juvare Company ("ESi"), is the sole developer and licensor of the ESi WebEOC® branded Software. Since its initial development and release in 1999, ESi has maintained control over the source code, the trademark and all other proprietary rights embodied in the ESi WebEOC Software and its companion products.

As the only entity with access to the ESi WebEOC Software source code, ESi is the only entity which may accurately diagnose software errors and defects, issue corrections and fully integrated enhancements, and warrant performance of the ESi WebEOC Software. ESi also provides a wide range of professional services. These services are specialized in nature and focused on configuration and technical support for the proprietary software technology. These services frequently require access to ESi proprietary information and are not available through or resold by any third parties. The WebEOC Software Core Subscription services and supporting Emergency Management and Municipal Operations Modules also are available exclusively from ESi.

Sole source acquisition of the ESi WebEOC Software products and services may be justified under Subpart 6.3 of the Federal Acquisition Regulations ("FAR"). In the case of software products and software maintenance, the FAR allow sole source acquisition of unique items which are available from one or a limited number of sources or for proprietary items where only limited data rights are provided under license. The ESi WebEOC Software meets these requirements. State and local government organizations are encouraged to ask their procurement officer if local laws include similar sole source provisions, or if the federal justifications may be used to support sole source procurement.

On behalf of ESi, we look forward to the opportunity to work with you. If you have any questions, or require additional information, please do not hesitate to contact me at the phone number listed below.

Sincerely,

ESi Acquisition, Inc., a Juvare company

A handwritten signature in blue ink that reads 'Robert Watson'.

Robert Watson
President and CEO



STS Pre-Approval Endorsement Request E-Mail Transmittal

TO : STS Contracts
Department of Finance & Administration
https://tn.service-now.com/sp?id=sc_cat_item&sys_id=a912fd4213b46b80316a73d36144b097

For additional instructions please visit:
<https://www.teamtn.gov/sts/planning-services/information-systems-planning/endorsement-request.html>

FROM : Jason Laney, IT Manager, Military/TEMA
E-mail : Jason.L.Laney@tn.gov

DATE : 04/21/2021 Received by STS on Thursday, April 22, 2021

RE : Request for STS Pre-Approval Endorsement

Applicable RFS # (END0000844)

State Security Confidential Information Applicability

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- ☒ Applicable
☐ Not Applicable

Additional language is attached and endorsement is contingent upon inclusion of this additional language:

- ☒ Applicable
☐ Not Applicable

STS Endorsement Signature & Date:

Stephanie Dedmon, Digitally signed by Stephanie
CIO (WMH) Dedmon, CIO (WMH)
Date: 2021.04.30 12:57:54 -05'00'

Chief Information Officer

NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.

Applicable RFS #	(END0000844)
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Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STS endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

Contracting Agency	Military
Agency Contact (name, phone, e-mail)	Jason Laney
Attachments Supporting Request (mark all applicable) Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request. <ul style="list-style-type: none"> <input type="checkbox"/> Solicitation Document <input checked="" type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input type="checkbox"/> Proposed Contract/Grant or Amendment <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) 	
Information Systems Plan (ISP) Project Applicability To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project. <p>IT Director/Staff Name Confirming (required): Jason Laney</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Applicable – Approved ISP Project# 1011383 <input type="checkbox"/> Not Applicable 	
Subject Information Technology Service Description Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract or solicitation sections related to the IT services. <p>WebEOC is a professional grade Emergency Management Incident Response tool used for managing records, requests, incidents, and resources. It is utilized by all partner members of Tennessee Emergency Management Agency to coordinate resources and efforts for all disaster and non-disaster events to which the agency is responding.</p>	

Attachment: STS Endorsement Conditions

This STS endorsement is contingent upon inclusion of the additional language below.

STS endorses with the understanding that the agency add Sections E.#.a and b. to the contract, from the *Contractor Hosted Services, Confidential Data, Audit, and Other Requirements* section of CPO's FA contract template. We have provided this template language at the bottom of the document, for reference.

Additionally, STS offers the following recommendations for the agency's consideration:

- 1) The CPO FA template instructs agencies to also include the Comptroller Audit Requirements section if the contractor will be hosting/processing any type of State data (Section E.#.c. from the *Contractor Hosted Services, Confidential Data, Audit, and Other Requirements* section). We have provided this template language at the bottom of the document, for reference.
- 2) STS defers to the agency for inclusion of business continuity requirements, since the SOW provides for replication, and the agency has its own instance. If the agency chooses, the requirements are in Section E.#.d from the *Contractor Hosted Services, Confidential Data, Audit, and Other Requirements* section of CPO's FA template. We have provided this template language at the bottom of the document, for reference, if you decide to include.
- 3) The CPO FA template instructs the agency to also include the Personally Identifiable Information clause when confidential State data is being hosted or processed by the contractor. We have provided this template language at the bottom of the document, for reference.

Contractor Hosted Services Confidential Data, Audit, and Other Requirements

- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
 - (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for

Attachment: STS Endorsement Conditions

any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:
<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with

Attachment: STS Endorsement Conditions

current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: **[NUMBER OF HOURS/MINUTES]**
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: **[NUMBER OF HOURS/MINUTES]**

Attachment: STS Endorsement Conditions

- (2) The Contractor **and the Subcontractor(s)** shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

SCR_Technology

Subject 34101, 30490T 21-329SR, ITB, Esi Acquisition-Juvare

Review/Edit Approvers

SCR Technology

SCR_Technology: 5294:Approved View/Hide Con



Comments

OK

Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Upload the completed document and route for approvals by selecting the appropriate SCR e-Form type in Edison. For additional guidance, please see the Special Contracts Request e-Form Job Aid available online at the following:

<https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>.

APPROVED [Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]		APPROVED [Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]	
CHIEF PROCUREMENT OFFICER	DATE	COMPTROLLER OF THE TREASURY	DATE

Approval of the SCR does not constitute approval of the final contract.

Request Tracking #		
1. Contracting Agency		Tennessee Emergency Management Agency
2. Type of Contract or Procurement Method		<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information		Jason Laney; Office: 615-532-8105
4. Brief Goods or Services Caption		WebEOC is a professional grade Emergency Management Incident Response tool used for managing records, requests, incidents, and resources. It is utilized by all partner members of Tennessee Emergency Management Agency to coordinate resources and efforts for all disaster and non-disaster events to which the agency is responding.
5. Description of the Goods or Services to be Acquired		WebEOC Cloud Hosted application with an on-premises disaster recovery system and supporting software and two years of continued maintenance and support.

Request Tracking #	
6. Proposed Contractor	ESI 235 Peachtree Street NE Suite 2300 Atlanta, GA 30303
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	Five Arrows Capital Partners (FACP) – 1251 Avenue of the Americas, 33 rd Floor, New York, NY. 10020
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	36 months
9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$ 293,628
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	Vendor is providing the solutions for the Cloud hosting environment and has provided the quotes for all related software and services for a 3-years period.
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	Cost presented in the quote are in parity with some other vendors' products and of lower costs in some others for a similar solution.
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Discussion between vendor, agency, and support staff have all taken place through email correspondence and via virtual meetings held by the vendor or by the agency/support staff.
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	This service/system is required for the agency to continue to conduct business in an optimal method. The service is actively used by all partner groups that include state, local, municipal, and county agencies across the state as well as the federal.

Request Tracking #	
19. Proposed contract impact on current State operations	Contract would allow for the agency to continue operations as normal and would have no foreseeable negative impact on state business unless the contract were to be denied and the agency not allowed to utilize the system.
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	The vendor is the sole source of this application. This application is currently being used by the agency has been in service since 2004.
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	The contractor has been providing this service to the agency for since 2004.
26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: Sole Source Name/Address: ESI 235 Peachtree Street NE Suite 2300 Atlanta, GA 30303
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	The agency has engaged in discussion with providers but has elected to remain with the current application provider in light of the current COVID related events they are coordinating.
Signature Required for all Special Contract Requests	

Request Tracking #	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document) [Either upload signed SCR in Edison or capture authorized agency approval in Edison Workflow.]	
<div>Signature: Date:</div> <hr/>	

**ESI ACQUISITION, INC.
END USER LICENSE AGREEMENT
LOCAL IMPLEMENTATION**

This **End User License Agreement** (the “**Agreement**”), effective this ____ day of _____, 202_ (“**Effective Date**”), is made by and between **ESi Acquisition, Inc.** (“**ESi**”), a Delaware Corporation with its principal place of business located at 235 Peachtree Street NE, Suite 2300, Atlanta, Georgia 30303 and **State of Tennessee, Department of Military** (“**Licensee**”), a State of Tennessee government department having its principal place of business located at 3041 Sidco Drive, Houston Barracks, Nashville, Tennessee 37204-1502.

The parties agree that this Agreement is for the renewal of the Support Services (as defined below) for the Software identified on Exhibit A, with some changes for the Licensee’s circumstances; previously all Software that was licensed to Licensee on a perpetual license basis was installed on Licensee’s premises (or “on-prem” Software) and upon execution of this Agreement by both parties, all of the Software identified on Exhibit A, including any and all Licensee Data within such Software, will now be hosted by ESi in a shared hosted environment with ESi’s third party data center provider, with Licensee retaining a non-production Instance of the Software on Licensee’s premises solely for the backup purposes identified on Exhibit A.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **License Agreement.** This is a license agreement and not an agreement for sale. As of the Effective Date of this Agreement (defined above), this Agreement covers the WebEOC® Software and services (including Support Services) that Licensee purchases from ESi as a provider of the Software governed by this Agreement (“**Services**”) pursuant to Exhibits incorporated herein or Statements of Work hereto that are executed and/or agreed upon by both parties and expressly references this Agreement. Licensee agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by ESi regarding future functionality or features.

2. **Definitions.** Unless otherwise defined within this Agreement (including, without limitation, an Exhibit incorporated herein), or any Statements of Work to this Agreement, the capitalized terms used in this Agreement shall have the meanings set forth below:

- a. “**Administrator**” means an employee, officer, director or consultant of Licensee to whom Licensee has provided a named user account and certain rights to administer the Software on behalf of Licensee.
- b. “**Affiliate**” means an entity that controls, is controlled by, or is under common control with a party hereto.
- c. “**Consulting Services**” means the installation, implementation, training, and other non-recurring services as set forth on Exhibit C and Exhibit E hereto; Consulting Services do not include Support Services.
- d. “**Derivative Work(s)**” means the work based on or derived from or modifications, enhancements or other functional extensions of the Software.
- e. “**Documentation**” means the user manuals, specifications, requirements, training materials, and any other documents, materials, information or guidance, whether supplied as printed material or in electronic form, provided by ESi in conjunction with the purchase, training, use, maintenance or update of the Software and Services provided hereunder.
- f. “**Hosted Services**” means as set forth on Exhibit D.
- g. “**Hosted System**” means as set forth on Exhibit D.
- h. “**Installation**” of the Software shall be deemed to be complete on the sooner to occur of (i) the day that the Software is available for production, (ii) the date of Licensee’s first use of the Software in a live production environment, or (iii) 90 days following the date of Licensee’s execution of this Agreement (or if for an amendment, Exhibit or Statement of Work adding Software License(s) under this Agreement, the Licensee’s execution of such subsequent amendment, Exhibit or Statement of Work).
- i. “**Juware Cloud**” means as set forth on Exhibit D.
- j. “**License**” means certain limited rights to use the proprietary ESi Software, Software Updates, online and/or hard-copy documentation and user guides as identified on Exhibit A hereto.
- k. “**Licensee Data**” means data input by Licensee or its authorized Users into the Software.
- l. “**Module**” means a proprietary set of status boards developed by ESi for use with selected ESi WebEOC branded software which are designed to address a common functional need.
- m. “**Party**” means ESi or the licensee individually and “**Parties**” shall mean ESi and the Licensee collectively.
- n. “**Software**,” means, individually and collectively, the software licensed to Licensee from ESi as identified on Exhibit A hereto and Software Updates to such software.
- o. “**Software Support Plan**” means the Support Services plan purchased by Licensee and provided by ESi pursuant to the Fees, if any are for the Software Support Plan, on Exhibit C to this Agreement.
- p. “**Software Updates**” means any technical correction, patch, bug fix, enhancement or other software release to the Software that is provided to Licensee pursuant to an active Software Support Plan.

- q. "Standard Business Hours" shall mean 9:00 a.m. through 6:00 p.m. U.S. Eastern Time, Monday through Friday, excluding holidays, and are subject to change by ESI.
- r. "Sub-Administrator" shall mean as set forth in Section 6 of this Agreement.
- s. "Subscription" means a term right for Licensee to use and access the Hosted Services, including, without limitation, the Software and to store the related Licensee Data within the Hosted System, subject to the terms of this Agreement.
- t. "Support Services" means the technical support services provided by ESI pursuant to Section 11 to this Agreement. May also be referred to as "Software Support Services."
- u. "Surge Capacity Plan" means an optional emergency response program which permits Licensee to increase the number of Users to support response to or recovery from an incident declared a disaster by a state or federal government agency.
- v. "Term" means as set forth in Section 5 and Exhibit A of this Agreement.
- w. "Travel Expenses" means travel, living and out of pocket expenses (including travel agent service fees and applicable internal per diems) incurred by ESI in connection with the performance of Services hereunder, including, without limitation, charges and fees incurred by ESI resulting from the cancellation/rescheduling of scheduled air travel or similar services based on changes requested by Licensee to the applicable dates for performance of the relevant Services.
- x. "User" means an authorized employee, contractor or affiliate of Licensee to whom Licensee has provided a named user account for the Software.

3. **Ownership and Licensing Authority.**

Ownership of, and title to, the Software and Documentation shall be held by ESI and its licensor(s) and is protected by United States law and applicable international laws, treaties and conventions regarding intellectual property. ESI and its licensor(s) shall retain all rights, title and ownership not granted herein to all copies of the Software and Documentation licensed under this Agreement. The owner of any third-party software, if any, licensed or utilized with the Software hereunder shall have the right to enforce this Agreement to the extent permitted by applicable law. "WebEOC" is a registered trademark of ESI Acquisition, Inc., all rights reserved.

4. **Subscription to Hosted Services.** Subject to the terms and conditions herein, ESI grants to Licensee, and Licensee accepts, subject to the following terms and conditions and payment of the applicable Fees, a limited, non-exclusive, non-transferable, and non-sublicensable revocable term Subscription to use and access the Hosted System, including, without limitation, the Software and the Licensee Data therein, for the stated Term. Except as expressly authorized in this Agreement, Licensee shall not rent, lease, loan, sell, sublicense, distribute, transfer, copy, reproduce, display, modify, provide commercial hosting services, time share or dispose of the Software or Documentation or any part thereof, use the Software to provide any services to third parties or otherwise use the Software and Documentation to generate commercial revenue.

5. **Reserved.**

6. **Permitted Uses.** Licensee's, and its User's, access and use of the Software shall be limited and subject to the following terms and conditions:

- a. Licensee may install and use one (1) Instance of the Software on one (1) Machine. As used herein, Machine means a single laptop, personal computer or web server, or a combined web and database server or multiple load-balanced web servers, configured to point to a single database and database server that is used operationally or "in production" ("Instance").
- b. Licensee may use the Software and Documentation solely for Licensee's internal business purposes.
- c. Licensee also may make one (1) copy of the Software for back-up or archival purposes.
- d. Licensee also may install the Software to support "non-production" software development cycle activities if a non-production license is granted to Licensee pursuant to this Agreement as set forth in Exhibit A to this Agreement.
- e. If Licensee requires or desires operational use of more than one Instance of the Software, an additional License(s) shall be required.
- f. The Licensee's storage capacity is set to the maximum as set forth on Exhibit A hereto. ESI shall have the right to conduct regular audits of Licensee compliance with the storage capacity permitted under this Agreement. In the event Licensee's storage usage exceeds such capacity, Licensee will receive a warning notice (via email being sufficient) from ESI and Licensee shall promptly remove the excess data from the Hosted System causing the capacity excess or Licensee shall promptly purchase from ESI additional storage capacity in sufficient quantity at ESI's then current rates for such additional storage; *provided, however*, if Licensee does not either remove such data or purchase the additional storage capacity within the time period specified in the warning notice (if no time period is specified in the notice, then thirty (30) calendar days shall apply), then ESI shall be

entitled to delete the Licensee's Data within the Hosted System on a first in-first out approach, without any liability to ESI.

- g. The Subscription is on a named and active user basis. Each Administrator, Sub-Administrator, and User shall have a unique user account. User accounts, usernames and passwords shall not be shared. Licensee may provide access to the number of Administrators, Sub-Administrators, and Users set forth in Exhibit A to this Agreement. User counts are based on the number of unique logins each month. ESI shall have the right to conduct regular audits of Licensee compliance with the number of Users permitted under this Agreement. Licensee agrees to provide ESI with the information required, if any, for ESI to complete such audits. Such audits shall be conducted at ESI expense, except that Licensee shall be responsible for reimbursing ESI for all reasonable audit expenses if Licensee shall be found in violation of the User limits set forth in this Agreement. Licensee shall be in violation of User limits if the number of Users during any month covered by the audit is greater than the number of Users permitted in Exhibit A and such increase in Licensee is not supported by a Surge Capacity Plan, and ESI shall invoice, and Licensee shall pay, for the amounts for such excess usage at ESI's then current rates for the usage above the Licensee's User limits set forth on Exhibit A.
- h. Administrators and Users shall have different rights to access the Software:
 - i. Administrators may access all features of the Software. Certain features of the Software may only be accessed by named users who are granted status as an Administrator ("Administration Tools"). Administration Tools include, without limitation, the following: creation and administration of user accounts; creation and subsequent editing of incidents; software configuration; use of the WebEOC BoardBuilder tool; installation and administration of board sets, plug-ins, modules, interfaces and Software Updates; and access to the Software's Application Programming Interface.
 - ii. "Sub-Administrator" is a subset of Administrator Users as set forth in this subsection (ii) and such Sub-Administrators are only active if set forth on Exhibit A to this Agreement and if Licensee has subscribed to the WebEOC Enterprise Software. Sub-Administrator rights also shall be available solely to support management of Sub-Organizations. Sub-Administrators may access the following Administration Tools: creation of user accounts; management of user accounts including definition of roles and permissions; and creation and subsequent editing of incidents. Maintenance of Sub-Administrator rights requires the purchase of an annual "Enterprise" Software Support Plan. If Licensee elects to discontinue the required Software Support Plan, access to Sub-Administrator features and any other benefits of Enterprise which ESI may elect to make available from time to time shall be discontinued.
 - iii. Users may not be granted access to any Administration Tools, except that Administrators may grant designated Users rights to create or edit incidents and to add or edit maps in MapTac™.
- i. Except where otherwise provided in this Agreement, rights to access and use Administrative Tools are given exclusively to the Licensee and Licensee may not grant such rights to any third party.
- j. Licensee may provide its consultant(s) or independent contractor(s) with access to the Software and Documentation, provided that such consultants or independent contractors are using the Software and Documentation exclusively for the benefit of the Licensee. Licensee shall be responsible for compliance by its consultants and independent contractors with the terms and conditions of this Agreement.
- k. If the Licensed Software includes the WebEOC Enterprise Software or the WebEOC Professional Software, Licensee may use the WebEOC BoardBuilder tool to copy, modify and create WebEOC Software forms and templates ("Status Boards") and Licensee may distribute, in printed form or as electronic media, the Status Boards to Licensee's authorized users, provided that such Status Boards are used exclusively for the internal business purposes of Licensee. Status Boards shall be considered Derivative Work(s) of the Software and Licensee shall not sell, resell, license or otherwise transfer for value any Derivative Work(s) created using the WebEOC BoardBuilder tool, and Licensee shall not distribute such Derivative Work(s) as part of any product or service for value to any third party. Any Derivative Work(s) prepared by Licensee shall remain subject to the terms of this Agreement and shall clearly display the following copyright notice to properly acknowledge the proprietary rights of ESI and its third-party licensors: "This work includes the intellectual property of ESI Acquisition, Inc. and its licensors and is provided under license. Copyright © 2002-2019, ESI Acquisition, Inc. and its licensors. All rights reserved."
- l. Licensee may, at its option and according to the terms of the ESI standard price list, obtain a Disaster Recovery Software License to support replication of an active, source server to one or more redundant ("Target") servers which may be placed in use to support disaster recovery or fail-over activities. A Disaster Recovery Software License is required for each Target server. A Disaster

Recovery Software License may be used to operate an "in production" instance of the Software only when the source server is inactive or inoperable; only one Instance of the Software shall be active at any one time. Licensee is not required to obtain additional licenses for Software plug-ins, modules or interfaces installed on a redundant licensed Machine.

- m. Permitted uses of WebEOC Fusion Software vary from the terms set forth in items (a) through (l) of this Section 6. Licensee may install and place in production one (1) copy of WebEOC Fusion Software on one (1) source server and one (1) target server. Licensee may make one (1) copy of the WebEOC Fusion Software for back-up or archival purposes, or Licensee may install a second copy of the WebEOC Fusion Software on a second Machine if only one (1) copy of the WebEOC Fusion software is in use at any one time. There is no limit to the number of licensed Instances of WebEOC Fusion Software (or number of WebEOC Fusion Software licensees) which may be connected by a single instance of WebEOC Fusion Software, provided that (i) only the Licensee of the WebEOC Fusion Software has administrative privileges and administrative access to the WebEOC Fusion Software and (ii) Licensee has paid to ESI all applicable connection fees.

- 7. **Protection of Software.** Licensee agrees to take all reasonable steps to protect the Software and Documentation from unauthorized copying or use. The Software source code represents and embodies trade secrets of ESI and/or its third-party licensors. The Software source code and embodied trade secrets are not licensed to the Licensee. Licensee agrees not to disassemble, decompile or otherwise reverse engineer the Software, use reflection or other mechanism to view, interpret, translate or try to understand the structure of the Software, or otherwise attempt to discover the source code and/or the trade secrets contained in the source code, and Licensee will not allow third parties to do so. Licensee may not, nor allow third parties to, modify or alter the Software in any way.

8. **Confidentiality.**

8.1 Confidential Information Defined. During the Term of this Agreement and in connection with each party's performance of their respective duties and obligations hereunder and thereunder, each party will disclose to the other ("Disclosing Party") and the other party shall receive ("Receiving Party") certain Confidential Information of the Disclosing Party. The term "Confidential Information" shall mean any and all information that the Disclosing Party discloses to the Receiving Party in connection with or related to this Agreement, whether disclosed verbally, electronically, visually, or in a written or other tangible or intangible form, including, but is not limited to, trade secrets, pricing information, terms of this Agreement, customers, customer lists, intellectual property, computer programs, software, documentation, formulas, data, inventions, techniques, financial, marketing or product development plans, personnel, audit results, designs, performance data, as to ESI, the ESI Technology and any other deliverables (including, without limitation, data, information, computer code and reports) provided in connection with the Software, and, as to Licensee, the Licensee's Information, as well as any other information that the Disclosing Party clearly communicates to the Receiving Party as confidential.

8.2 Duties with Regard to Confidential Information. The Receiving Party agrees that it will only use the Disclosing Party's Confidential Information in the performance of its obligations hereunder or as otherwise expressly provided in this Agreement, and that it will only disclose the Disclosing Party's Confidential Information only to those of its directors, officers, employees, consultants, agents, independent contractors, and professional advisers who need to know such information and who are subject to written agreements with the Receiving Party sufficient to enable the Receiving Party to require such persons to comply with the Receiving Party's confidentiality obligations hereunder. The Receiving Party agrees that it will treat all of the Disclosing Party's Confidential Information with the same degree of care (but no less than reasonable care) as it accords its own confidential information.

Notwithstanding the foregoing or ESI's obligations elsewhere in this Section, Licensee understands that ESI does not require any information for the performance of Services hereunder other than telephone numbers and applicable account ID's, and that ESI cannot guarantee the security of Licensee Information when stored on Licensee's applicable equipment and hardware or transmitted or accessible when using the internet or other services providers. ESI shall not be liable or responsible to Licensee or any other party for any losses, damages, claims, costs or other obligations arising out of or relating to any unauthorized access to, disclosure or use of information stored by Licensee on the System or while such information is transmitted or accessible through the Software, the internet, or services providers. Additionally, ESI shall not be responsible for any breach of security or confidentiality caused by Licensee's failure to maintain the confidentiality and control of its user identification numbers or passwords related to its use of the Software provided hereunder.

8.3 Exclusions from Confidential Information. Confidential Information does not include information that (a) is or becomes generally available to the public other than as a result of an unauthorized disclosure by the Receiving Party or its personnel; (b) has been or is obtained by the Receiving Party from an independent source without accompanying obligations of confidentiality; (c) is independently developed by the Receiving

Party without reliance in any way on the Disclosing Party's Confidential Information; or (d) has been approved for unrestricted release by the Disclosing Party in writing. Additionally, the Receiving Party may disclose the Disclosing Party's Confidential Information where the Receiving Party is required by law to disclose information that is otherwise Confidential Information, provided (to the extent not prohibited by law) the Receiving Party has promptly notified the Disclosing Party in writing as soon as is commercially reasonable of such requirement to disclose the Disclosing Party's otherwise Confidential Information in order to permit the Disclosing Party to seek confidential treatment of such information.

8.4 Protection of Confidential Information. Notwithstanding the "Dispute Resolution" Section of this Agreement, the Receiving Party acknowledges that the Disclosing Party shall have the right to take all reasonable steps to protect the Disclosing Party's confidential and proprietary interests, including, but not limited to, injunctive relief in a court of law or equity and any other remedies as may be available at law or in equity in the event the Receiving Party does not fulfill its obligations under this Section.

8.5 Survival of Confidentiality Obligations. Each party's obligations of confidentiality pursuant to this Agreement for all Confidential Information disclosed between the parties during the term of this Agreement shall survive the expiration or termination of this Agreement as follows: (i) for Confidential Information consisting of trade secrets, for so long as such information remains a trade secret of the disclosing party or for five (5) years following the expiration or termination of this Agreement, whichever is longer, (ii) for Confidential Information consisting of the disclosing party's Licensee information or ESI's suppliers' information, indefinitely, and (iii) for all other Confidential Information, for five (5) years following the expiration or termination of this Agreement.

8.6 Termination of This Agreement. Upon termination of this Agreement or upon the Disclosing Party's written request, the Receiving Party agrees to terminate all use of the Disclosing Party's Confidential Information and to either to return to the Disclosing Party all copies of the Disclosing Party's Confidential Information in its possession or under its control or to provide the Disclosing Party with written notice from one of the Receiving Party's authorized representatives certifying that all copies of the Disclosing Party's Confidential Information in the Receiving Party's possession or control have been destroyed; provided, however, the Receiving Party may (at its option, but not its obligation) keep a copy of the Disclosing Party's Confidential Information in its archives, and the provisions of this Section 8 shall continue with respect to such Confidential Information.

9. **Proprietary Interests.** The Software and Documentation, and all copies thereof, shall remain the exclusive property of ESI and/or its third-party licensors. All applicable rights to copyrights, trademarks, logos, patents and other intellectual property shall remain vested in ESI and/or its third-party licensors. Licensee shall not claim, register, alter or modify, any interest in such copyrights, trademarks, patents or other intellectual property, nor shall Licensee nor attempt to do any of the foregoing. Licensee shall not translate any of the ESI trademarks into any other language or alphabet. Notwithstanding the foregoing, Licensee shall always have title to data input and output arising out of the use of the Software, and any computer programs developed by or for Licensee using output of the Software as input to another source, and which do not include any logic and code of the Software, and such shall remain the exclusive property of the Licensee. Licensee acknowledges and agrees that ESI may seek equitable relief at any time to remedy a violation or threatened violation of the restrictions set forth herein regarding the use and protection of the Software and Documentation.
10. **Copying of Documentation.** Licensee may make as many copies of the Documentation as necessary for Licensee's internal purposes, provided that (i) Licensee shall not modify or alter the content or appearance of the Documentation, modify or alter the appearance of any ESI trademark or logo in the Documentation, or eliminate any references to ESI Acquisition, Inc., WebEOC or other Software in the Documentation, (ii) Licensee shall reproduce and distribute the ESI copyright and notices page contained in the Documentation with all such copies, and (iii) maintains the confidentiality of the copies and destroys or returns such copies in accordance with Section 8 (Confidentiality) above.
11. **Support Services.** During the Term of this Agreement and provided Licensee is not in violation of this Agreement (including, without limitation, its payment obligations hereunder), ESI will provide the Support Services as expressly identified on Exhibit C to this Agreement consisting of the following: (i) ESI will use reasonable efforts to maintain the Software to comply with the applicable Documentation in all material respects, and (ii) if and when made generally available through Support Services to ESI's other customers receiving Support Services, providing subsequent releases and versions of the Software for use consistent with ESI's then current policies. All Software Updates received by Licensee shall be subject to the terms of this Agreement. Support Services are further defined on Exhibit B hereto; Exhibit B is herein incorporated and made part of this Agreement by this reference. Support Services shall not include, and ESI shall not be responsible for, failures of the Software to perform consistent with this Agreement, the Documentation, and other details set forth in any Statements of Work hereto in all material respects resulting from or caused by

Licensee, Licensee's hardware and equipment, Licensee's connection to the Software, third party service providers, including, without limitation, communications services providers, or otherwise disclaimed elsewhere in this Agreement. In the event Licensee does not pay for Support Services, Licensee shall not receive any Support Services and if the License to the Software is a term license, then such term license shall be revoked and all access and use of the Software shall terminate; in the event that Licensee does not pay for Support Services for a period of time and then Licensee elects to renew Support Services, Licensee shall pay, and ESI shall invoice, the fees for the period of time that the Licensee allowed the Support Services to lapse plus ESI's then current fees for lapsed Support Services on such amounts.

12. **Hosted Services.** During the Term of this Agreement and provided Licensee is not in violation of this Agreement, ESI will provide Hosted Services, as set forth in Exhibit D hereto, for the Software during the Standard Business Hours. Exhibit D is herein incorporated and made part of this Agreement by this reference.
13. **Consulting Services.** ESI will provide the Consulting Services expressly set forth in the Statement of Work for such services identified in Exhibit E attached hereto, if any, for the Fees for such professional services, if any, as set forth in Exhibit C and the Exhibit E; Exhibit E is herein incorporated and made part of this Agreement by this reference.
14. **Reserved.**
15. **Reserved.**
16. **Reserved.**
17. **Reserved.**
18. **Reserved.**
19. **Export Controls.** Licensee acknowledges that the Software and Documentation are subject to United States export laws. Licensee shall not, nor shall Licensee authorize or permit its directors, employees, consultants, independent contractors or other persons, to export, re-export, disclose or otherwise provide the Software and/or Documentation to any country unless an appropriate license, exemption or authorization has been obtained from the U.S. Government. Licensee expressly agrees that Licensee shall not export, re-export, barter, or otherwise provide or disclose the Software and Documentation, in whole or in part, to: (a) any country covered by any United States trade embargo; (b) any person listed on the United States Department of Treasury's list of Specially Designated Nationals; (3) any person or entity listed on the United States Department of Commerce Denied Persons List; (4) any person or entity listed on the United States Department of Commerce Unverified or Entity Lists; (5) any person or entity listed on the United States Department of State Debarred List; or (6) any person or entity where such export, re-export, barter, disclosure or provision violates United State export control law or regulation. Licensee represents and warrants that neither it nor its directors, employees, consultants, nor any other persons or entities who may gain access to the Software and Documentation through the Licensee, are persons or entities subject to such U.S. export controls.
20. **U.S. Government Rights.**
 - 20.1 If Licensee is an agency, department, or other entity of the United States Government ("Government"), or funded by the United States Government, Licensee's use, duplication, reproduction, release, modification, disclosure or transfer of the Software, Documentation, technical specifications, or any related materials of any kind, including technical data, is restricted in accordance with Federal Acquisition Regulation ("FAR") 12.212 for civilian agencies, Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7202 for military agencies and the equivalent regulations for the Department of Energy. The use of the Software and Documentation is further restricted in accordance with the terms of this Agreement, or any modification thereto.
 - 20.2 The Software and Documentation are commercial computer software and commercial computer software documentation. Licensee shall ensure that each copy used or possessed by or for the Government is labeled with the following: "Manufacturer is ESI Acquisition, Inc., 235 Peachtree Street NE, Suite 2300, Atlanta, GA 30303. ALL RIGHTS RESERVED. PROPRIETARY PRODUCTS." For the purpose of any federal, state or local law, Licensee agrees that the Software and Documentation are trade secrets and proprietary commercial products of ESI and/or its third-party licensors and are not subject to disclosure.
21. **Reserved.**

EXHIBIT A TO END USER LICENSE AGREEMENT

1. Term of the Subscription to the Hosted Services & Support Services for the Software

The Subscription to the Hosted Services and the Support Services for the Software set forth on this Exhibit A shall commence on **November 1, 2021** and continue thereafter for an initial period of **three (3) years** (the "Initial Period").

2. Licensed Software

Licensee has previously licensed the following Software from ESi:

<u>Number of Licensed Machines</u>	<u>Software</u>
1	ESi WebEOC® Software – Professional ESi WebEOC® Fusion Software ESi WebEOC® Maps Add-On Software ESi WebEOC® Resource Request and Deployment Manager Software

The Subscription includes the following **purchased non-production Hosted Licensed Machine**:

<u>Number of Instance</u>	<u>Purpose</u>
0	Development/testing of Software Updates prior to placing in production (internal use only)
0	Training (internal use only)
0	Disaster Recovery

The Subscription includes the following **purchased non-production on-prem (Licensee Hosted) License**:

<u>Number of Instance</u>	<u>Purpose</u>
1	Backup of Licensee Data

3. Authorized Number of Users

Licensee may provide access to the following number of Administrators, Sub-Administrators, and Users, all authorized on a named and active user basis:

<u>User Type</u>	<u>Qty of Users</u>
Administrators	3
Sub-Administrators	0
Users	250 (inclusive of Administrators and Sub-Administrators)

4. Licensee Storage Capacity: 50 GB

5. Surge Capacity Plan

Surge Capacity Plan has been purchased for Term: ☐ Yes ☒ No

6. Emergency Response Program

Emergency Response Program has been purchased for Term: ☐ Yes ☒ No

/End of Exhibit A

EXHIBIT B TO END USER LICENSE AGREEMENT
DESCRIPTION OF SUPPORT SERVICES FOR THE SOFTWARE

Support Services for the Software shall include the following (in addition to what is stated in the Agreement):

- 1) **Telephone Assistance:** Licensee's "Support Contact" (as defined below) may contact the Juvare Support Center for telephone assistance to seek advice relating to the use of the Software and/or to identify and work to provide a "workaround" for Software problems, if available. Telephone assistance for non-Emergency Support Services (as defined below) shall be available during Standard Business Hours.
- 2) **Problem Assistance:** Licensee may submit problem assistance requests for Software assistance via the published ESI's support escalation procedures. ESI will notify Licensee if any request is beyond the scope of this Agreement and is, therefore, subject to additional charges. Requests for problem assistance for non-Emergency Support Services shall be available during Standard Business Hours.
- 3) **Software Updates:** ESI, at no additional charge, will provide Software Updates for the Software as such Software Updates are made generally available to other ESI customers receiving Support Services. Any training required by Licensee related to such Software Updates and subsequent versions of the Software may be provided for an additional charge. ESI shall provide Licensee with downloadable Software Updates to the Software, except for modules, as such Software Updates become available. Software Updates may include correction releases (i.e., patches provided to correct software anomalies), point releases (i.e., modifications to current generation of software including enhancement and improvements), and level releases (i.e., new releases or new generation of software), but shall not include new products, modules or plug-ins released commercially by ESI as independently priced items. For Modules, ESI, at no additional charge, will provide Software Updates for Modules as such Software Updates are made to correct errors affecting the operation of the Module, whether such error is caused by the Module itself or by an error in the Software. ESI shall not provide for any enhancements to the Module unless agreed to in writing by both parties and upon payment of the fees for such enhancements.

Process to Obtain Support Services. To obtain Support Services or telephone or problem assistance, Licensee's designated Support Contact (an assigned Administrator that has completed the Administrator training and is listed as the Support Contact for Licensee) may contact the Juvare Support Center pursuant to ESI's escalation support procedures. Such support procedures include contacting the Juvare Support Center via telephone, email and, when required, remote session support during Standard Business Hours and during Non-Standard Business Hours.

"Routine" Support Services includes assistance with the use and configuration of the software; assistance with identification and resolution of errors or defects assistance with application and use of new releases; general support for Board Builder and boards built by ESI or an ESI-certified technician; and access to WebEOC best practices, community-use status boards, "help" resources and other content made available through <https://www.juvare.com/customers/technical-support>, a "Licensee only" web forum. Support Services may be accessed by Licensee by calling the Support Center via (877) 771-0911 or by electronic mail at support@juvare.com (subject to updates and changes by ESI).

"Emergency" Support Services shall be available 24 hours per day, 365 days per year. Emergency telephone support includes any assistance needed by Licensee while Software is in use operationally, whether for actual incidents or exercises excluding assistance with GIS interfaces, mapping or products, which is licensed by a third-party vendor is available only during Standard Business Hours. Emergency Support Services may be accessed by calling the Support Center via (877) 771-0911 (subject to updates and changes by ESI).

Licensee may request performance of additional services by ESI. Such services shall be invoiced separately by ESI at ESI's then current rate for such services and Travel Expenses, if applicable.

Limitations on Support Services. ESI will provide Support Services for only the current version of any Software. Licensee is obligated to promptly implement all Software Updates, work arounds and error corrections provided by ESI.

Problems or Issues Not Covered by Support Services. The following issues/problems, and all issues or problems caused by the following, are not covered by Support Services:

1. Alterations to the Software not authorized by ESI;
2. Unless otherwise agreed in an Exhibit, Quote or Statement of Work hereto, customizations to the Software from consulting or professional services provided by ESI, including applications design or recommendations by Licensee;
3. Software problems created by Licensee negligence or fault or failure to comply with any specifications, policies, procedures or requirements for use of the Software, including, without limitation, those set forth in ESI's [Terms & Conditions](#);
4. Software problems caused by or related to a change in Licensee's service provider or internet access provider. Without limiting the generality of the foregoing, no reconfiguration of the Software due to a change in a service provider is covered under Support Services. Licensee should notify ESI prior to changing its service provider to enable ESI to provide configuration specifications to the new service provider. Any programming and configuration changes will be charged to Licensee at the then-current ESI's daily/hourly rates for such reconfiguration services;
5. Software problems that do not significantly impair or affect the operation of the Software;
6. Assistance with third party products; training; installation of plug-ins, boards or modules; API support; Board building; and
7. Licensee's failure to allow for the prompt implementation of error corrections, Software updates, or any work-around provided or made available by ESI (including, without limitation and applicable at all times, implementation of more recently released, generally available versions or releases of the Software made available through Support Services that contain corrections to the relevant error or where such error does not occur when using such more recently released version or release of the Software).

Licensee Responsibilities. Licensee agrees to limit its requests for Support Services after Standard Business Hours to occasions when the problem related to the Software is critical to Licensee's operation and cannot wait to be addressed until Standard Business Hours on the next succeeding ESI business day.

/End of Exhibit B

EXHIBIT D TO END USER LICENSE AGREEMENT
HOSTED SERVICES

1. Definitions. For the purposes of this Exhibit, the following words have the meaning set forth below:
 - a. **"Juvare Cloud"** means the shared hardware environment for the purpose of hosting and maintaining software and data on behalf of ESi's customers; may also be referred to as the application service provider or the "ASP."
 - b. **"Hosted System"** means the combination of hardware, software and networking components used by the application service provider to deliver the Hosted Services.
 - c. **"Hosted Services"** means the installation and management of specified software applications in the Juvare Cloud shared environment on behalf of a ESi customer and exclusively for the benefit of permitted users of the Software.

All other capitalized terms in this Exhibit D shall have the same meaning set forth in the Agreement, except where otherwise stated in this Exhibit.
2. Scope of Services. ESi shall provide the following services to address the Software hosting needs:
 - a. ESi shall provide Hosted Services to Licensee according to the provisions set forth in the Agreement and this Exhibit. ESi shall notify Licensee promptly upon creation of Hosted Services account and provide Licensee with all information required to access such account. ESi, at its sole discretion, may provide and maintain such Hosted System and/or deliver such Hosted Services internally or through a qualified subcontractor.
 - b. ESi shall provide and maintain the facilities, hardware, and networking components as it sees fit to provide access to the Juvare Cloud for the benefit of Licensee.
 - c. ESi shall perform, at its convenience and after notice to Licensee, scheduled updates of the Juvare Cloud as ESi or its hosting subcontractor sees fit. Such updates shall be scheduled to enable the simultaneous update to all of ESi-hosted customers.
 - d. ESi or its hosting subcontractors shall be entitled to perform, as needed, emergency security updates to the Hosted System to protect the Juvare Cloud or the subcontractor's hosted environment from newly identified and widespread threats to the internet or internet-based services posed by worms, viruses and Trojans, or to address other vulnerabilities, with little or no notice to Licensee.
 - e. ESi shall provide and maintain a redundant shared environment of the Juvare Cloud at a location that is geographically separated from its primary ASP Environment to ensure continuity of Software access and operation in the event of any unforeseen outage, disaster or other event that may interrupt service at the primary location of the Juvare Cloud. Failover to the redundant shared environment of the Juvare Cloud is a manual process and service will be activated by ESi immediately upon notification of malfunction, unavailability or failure of primary shared environment of the Juvare Cloud.
 - f. ESi will notify (via ESi's Support Center) the Licensee of any planned service outages, i.e., for the purpose of performing Software updates or testing, or other inability to perform the services outlined in this Agreement.
 - g. ESi shall schedule, perform and maintain a duplicate ("backup") record of Licensee Data within the Juvare Cloud. ESi shall perform hourly SQL transaction log backups and daily full backups. Data backups are limited to SQL database server files (i.e., those files having a .mdf or .ldf file extension). Data backups shall be retained on-site for four weeks.
 - h. In addition to the Support Services pursuant to the Agreement and Exhibit B, ESi shall provide Licensee with Support Services for the Hosted Services which include assistance with problems related to the Juvare Cloud, data access, Hosted System access, or similar problems. Such Support Services for the Hosted Services may be accessible to Licensee via the same contact information provided to Licensee for Support Services; provided, however, services to be provided by ESi under this Exhibit and the Agreement do not include assistance with third party products; training; installation of plug-ins, boards or modules; API support; or board building; or repair or correction of errors, defects or other operational or performance defects caused by Software configuration, modification, enhancement or programming provided by any party other than ESi or an ESi-certified technician. Any professional services described in this Section 2(h), or services required to repair or correct the errors and defects described in this Section 2(h), shall be provided on a fee-for-services basis at rates consistent with the ESi published price list in effect at the time services are rendered.
 - i. Licensee may request performance of additional services by ESi. Such services shall be invoiced separately by ESi at the current published rate for labor and actual costs for materials and travel, if applicable.
3. Licensee Obligations
 - a. The Licensee shall maintain, at Licensee's expense, a secure high-speed internet connection through which to access its hosted Software.

- b. The Licensee shall appoint a designated point of contact and two alternate points of contact for its interactions with ESI. Licensee shall provide ESI with the name, job title, physical address, telephone number, facsimile number and electronic mail address for each of the contact persons. Licensee shall keep such contact information up-to-date and promptly notify ESI, in writing via electronic mail, of any changes.
 - c. The Licensee shall use reasonable security precautions in connection with the use of Services provided under this Agreement.
 - d. The Licensee is responsible for any and all use and access to the Hosted System and Hosted Services by its employees, agents, contractors and permitted users of the Software and Hosted Services.
 - e. The Licensee shall make best efforts to notify ESI in writing, via electronic mail or facsimile, of any planned non-emergency use of its Software, such as the occurrence of training sessions, drills and exercises, to aid ESI with the planning of any scheduled outages.
 - f. The Licensee shall promptly notify ESI Support Center of any identified Hosted Services outage that impairs Licensee's access to the Software so that ESI may manually activate the redundant shared environment of the Juvare Cloud and immediately commence work to restore service to the primary shared environment of the Juvare Cloud.
 - b. The Licensee shall not conduct any load testing, performance testing or any other test of the Hosted System which may degrade performance or limit or adversely impact availability of the Juvare Cloud for other customers.
4. Limitations on Use of Hosted Services.
- a. Licensee's usage of the Hosted Services in the Juvare Cloud is subject to capacity and performance constraints. Monthly active users do not equal maximum concurrent users. Concurrent user capacity will be variable based on Juvare Cloud load.
 - b. Access to the Hosted System may not be rented, leased, sold, sub-leased, assigned or otherwise transferred for value or for no value by Licensee to any third party.
 - c. Hosted System and Hosted Services are provided to support the Software which is an information management tool. Hosted Services are not guaranteed to be fault-tolerant or to provide fail-safe performance. Hosted Services are not appropriate for use in ultra-hazardous environments where failure of the Hosted System or the Juvare Cloud may lead to bodily injury, death or destruction of property.
 - d. Installation of Software applications in the Juvare Cloud is limited to the Software included in the Subscription to Licensee by ESI and Software supplied by ESI either as a component of the Hosted System or to support delivery of Hosted Services.
 - e. ESI shall only be responsible for performance of components of the Hosted System and Services under its control. ESI shall not be responsible for performance deficiencies caused by processes, hardware and software beyond its control including, but not limited to, information transmission delays due to excessive internet traffic, internet outages, or failure of Licensee to perform its obligations under this Agreement.
 - f. The warranties set forth in the Agreement shall be void if any breach of this warranty or failure of the hosting environment or Software is caused by unauthorized use, improper use or modification to Software made by Licensee or its authorized users.

/End of Exhibit D

APPENDIX A – Change Order

Change Number	Change Type	Description of Change	Requestor	Date Submitted	Date Approved	Status

Special Notes or Comments	
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ESi Approvals

Position	Name	Date	Approved (Yes/No)

Licensee Approvals

Position	Name	Date	Approved (Yes/No)

21.3 Dispute Resolution. Subject to the "Confidentiality" Section of this Agreement, the parties agree to resolve all differences or disputes arising out of or relating to this Agreement shall be resolved and settled by final and binding arbitration administered by the Judicial, Arbitration, Mediation Services (J.A.M.S.) pursuant to J.A.M.S.' then-current arbitration rules; provided, however, that in the event that J.A.M.S. shall be unavailable for any reason, then the arbitration shall be filed with and administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules. Any such arbitration shall be conducted before a single arbitrator in a proceeding held in the Atlanta, Georgia area. The arbitrator shall award to the prevailing party in such arbitration such party's attorneys' charges, arbitrator's charges, J.A.M.S.' charges (or, if applicable, AAA's charges) and other costs incurred by the prevailing party in such arbitration. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The language of the arbitration shall be English. The arbitrator shall apply the substantive law of Georgia when resolving the differences before them and shall not resort to any conflict of law rule that would call for the application of the law of another jurisdiction. The arbitrator shall take into account principles of legal privileges, such as those involving the confidentiality of communications between a lawyer and a Licensee. The arbitrator shall render any monetary award in U.S. dollars. Notwithstanding the foregoing, the parties reserve the right to seek injunctive relief in a court of competent jurisdiction to protect any intellectual property rights and to prevent the release of Confidential Information.

21.4 Assignment. Licensee may not assign or otherwise transfer, in whole or in part, or in any other manner, any rights, obligations, or any interest in or under this Agreement without the prior written consent of ESI and any purported attempt to do so will be null and void. A merger or other acquisition by a third party will be treated as an assignment. ESI may at any time and without Licensee's consent assign all or a portion of its rights and duties under this Agreement to a company or companies wholly owning, owned by, or in common ownership with ESI. This Agreement shall be binding on each party's successors and permitted assigns.

21.5 Change in Subcontractors. ESI has the right to change, modify and otherwise convert services providers and subcontractors (including, without limitation, its affiliates) used to provide the Services and terms under which the Services are offered, provided that the basic functionality and quality of the Services will not be materially adversely affected.

21.6 Interpretation. In the event of a conflict between this Agreement and the terms of any Exhibit or, Statement of Work attached hereto, the terms of the Exhibit or Statement of Work shall prevail and control the interpretation of this Agreement. The Exhibits, Statement of Work, attachments, and schedules together with this Agreement shall be interpreted as a single document.

21.7 Force Majeure. No breach of any obligation of ESI in this Agreement or an Exhibit, Statement of Work or Quote shall constitute an event of default or breach to the extent it arises out of a cause, existing or future, that is beyond the reasonable control of ESI, including without limitation, "acts of god" (such as earthquake, natural disaster, or flood), war, terrorists' acts, riot, theft, labor disputes, government regulations, curtailment of transportation, or a cause making ESI's performance impossible or commercially impracticable or the like.

21.8 Limitations Period. Licensee agrees not to bring a legal action against ESI more than two years after the later of the date on which the cause of action accrues or the date on which the party discovered or with reasonable investigation should have discovered the cause of action.

21.9 Prevailing Party. The prevailing party in any arbitration, suit, or action brought by one party against the other party to enforce the terms of this Agreement, any Exhibits or Statements of Work hereto or any rights or obligations hereunder, shall be entitled to receive its reasonable costs, expenses, and attorneys' charges of bringing such arbitration, suit, or action.

21.10 Independent Contractors. The parties are independent contractors, and no agency, partnership, franchise, joint venture or employment relationship is intended or created by this Agreement. Neither party shall make any statement, representation, warranty or other commitment on behalf of the other party.

21.11 No Implied Licenses. There are no implied licenses under this Agreement. Neither party shall exceed the scope of the licenses granted hereunder. ESI reserves all rights not specifically granted to Licensee.

21.12 Notice. All notices shall be in writing and sent by certified mail (return receipt requested), overnight courier, or delivered personally to the addresses indicated on the first page of this Agreement for the applicable intended recipient, or such other address as either party may indicate by at least ten (10) days prior written notice to the other party. All notices to ESI shall be directed to the attention of the President/CEO of ESI, with a copy of all such notices also sent to ESI to the attention of ESI's General Counsel at the same address as ESI. Notice will be effective on the date shown on the delivery receipt or, in the case of personal delivery, actual receipt. All notices required pursuant to this Agreement shall be provided in strict compliance with this Section.

21.13 Severability. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

21.14 No Third-Party Beneficiaries. ESI and Licensee agree that, except as otherwise expressly provided in this Agreement, there shall be no third-party beneficiaries to this Agreement.

21.15 Headings. The headings used in this Agreement, Exhibits, and Statements of Work are solely for convenience and shall not be considered in its interpretation.

21.16 Authorized Signer. Each party represents that the person signing this Agreement, or any Exhibit or Statement of Work hereto has been properly authorized and empowered to execute and deliver this Agreement and any Exhibit or Statement of Work hereto on behalf of such party. This Agreement becomes null and void if the time between the earlier dated signature and the later dated signature exceeds sixty (60) days, unless waived by ESI.

21.17 Incorporation by Reference. Any Attachments to this Agreement and any Exhibit or Statement of Work now existing and hereafter executed or issued that are made pursuant to this Agreement shall be deemed to be part of this Agreement and are incorporated into this Agreement by reference.

21.18 Amendments. Except as otherwise provided herein or in an applicable Exhibit, Statement of Work or Quote, this Agreement and any Exhibit, Statement of Work or Quote may be changed or modified only in a written document signed by duly authorized representatives of both parties.

21.19 Counterparts/Duplicate Originals. This Agreement and any Exhibit, Statement of Work or Quote may be executed by the parties in one or more counterparts or duplicate originals, and each of which when so executed shall be an original, but all such counterparts shall constitute one and the same document.

21.20 Publicity/Use of Trademarks. ESI and Licensee herein agree to permit the occasional use of each other's name and logo as well as reference to this Agreement and the Services in their respective promotional advertising, press releases and public relations efforts. All such use will be only in a manner that reflects positively upon the other party. ESI may, without obtaining Licensee's prior written consent, place Licensee's name on a list of ESI's customers.

21.21 Non-Solicitation. Licensee shall not, without ESI's prior written consent, directly or indirectly, solicit for employment or hire any Restricted Employee (as defined herein) while such person is employed by ESI and for the 12-month period starting on the earlier of: (i) termination of such Restricted Employee's employment with ESI, or (ii) termination or expiration of this Agreement. "Restricted Employee" means any former or current employee of ESI or its Affiliates that provided services on behalf of ESI hereunder or that Licensee became aware of or came into contact with during ESI's performance of its obligations under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives as of the day and year set forth above. This Agreement becomes null and void if the time between the earlier dated signature and the later dated signature exceeds sixty (60) days, unless waived by ESI.

ESI Acquisition, Inc.

State of Tennessee, Department of Military ("Licensee")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

End of End User Licensed Agreement; Exhibits follow.

EXHIBIT A TO END USER LICENSE AGREEMENT

1. Term of the Subscription to the Hosted Services & Support Services for the Software

The Subscription to the Hosted Services and the Support Services for the Software set forth on this Exhibit A shall commence on **November 1, 2021** and continue thereafter for an initial period of **three (3) years** (the “**Initial Period**”). Thereafter, the Subscription to the Hosted Services and the Support Services shall automatically renew for successive additional 12-month periods (each a “**Renewal Period**”), provided that either party may non-renew the Subscription to the Hosted Services and the Support Services as of the end of the Initial Period or any subsequent Renewal Period, on not less than 60 days' prior written notice of non-renewal to other party. “**Term**” means the Initial Period and any Renewal Period of the Subscription to the Hosted Services and the Support Services as set forth herein. Any such non-renewal shall be effective as of the end of the Initial Period or subsequent Renewal Period, as applicable, following the expiration of such 60-day notice period.

2. Licensed Software

Licensee has previously licensed the following Software from ESi:

<u>Number of Licensed Machines</u>	<u>Software</u>
1	ESi WebEOC® Software – Professional ESi WebEOC® Fusion Software ESi WebEOC® Maps Add-On Software ESi WebEOC® Resource Request and Deployment Manager Software

The Subscription includes the following **purchased non-production Hosted Licensed Machine**:

<u>Number of Instance</u>	<u>Purpose</u>
0	Development/testing of Software Updates prior to placing in production (internal use only)
0	Training (internal use only)
0	Disaster Recovery

The Subscription includes the following **purchased non-production on-prem (Licensee Hosted) License**:

<u>Number of Instance</u>	<u>Purpose</u>
1	Backup of Licensee Data

3. Authorized Number of Users

Licensee may provide access to the following number of Administrators, Sub-Administrators, and Users, all authorized on a named and active user basis:

<u>User Type</u>	<u>Qty of Users</u>
Administrators	3
Sub-Administrators	0
Users	250 (inclusive of Administrators and Sub-Administrators)

4. Licensee Storage Capacity: 50 GB

5. Surge Capacity Plan

Surge Capacity Plan has been purchased for Term: ☐ Yes ☒ No

6. Emergency Response Program

Emergency Response Program has been purchased for Term: ☐ Yes ☒ No

/End of Exhibit A

EXHIBIT B TO END USER LICENSE AGREEMENT
DESCRIPTION OF SUPPORT SERVICES FOR THE SOFTWARE

Support Services for the Software shall include the following (in addition to what is stated in the Agreement):

- 1) **Telephone Assistance:** Licensee's "Support Contact" (as defined below) may contact the Juvare Support Center for telephone assistance to seek advice relating to the use of the Software and/or to identify and work to provide a "workaround" for Software problems, if available. Telephone assistance for non-Emergency Support Services (as defined below) shall be available during Standard Business Hours.
- 2) **Problem Assistance:** Licensee may submit problem assistance requests for Software assistance via the published ESI's support escalation procedures. ESI will notify Licensee if any request is beyond the scope of this Agreement and is, therefore, subject to additional charges. Requests for problem assistance for non-Emergency Support Services shall be available during Standard Business Hours.
- 3) **Software Updates:** ESI, at no additional charge, will provide Software Updates for the Software as such Software Updates are made generally available to other ESI customers receiving Support Services. Any training required by Licensee related to such Software Updates and subsequent versions of the Software may be provided for an additional charge. ESI shall provide Licensee with downloadable Software Updates to the Software, except for modules, as such Software Updates become available. Software Updates may include correction releases (i.e., patches provided to correct software anomalies), point releases (i.e., modifications to current generation of software including enhancement and improvements), and level releases (i.e., new releases or new generation of software), but shall not include new products, modules or plug-ins released commercially by ESI as independently priced items. For Modules, ESI, at no additional charge, will provide Software Updates for Modules as such Software Updates are made to correct errors affecting the operation of the Module, whether such error is caused by the Module itself or by an error in the Software. ESI shall not provide for any enhancements to the Module unless agreed to in writing by both parties and upon payment of the fees for such enhancements.

Process to Obtain Support Services. To obtain Support Services or telephone or problem assistance, Licensee's designated Support Contact (an assigned Administrator that has completed the Administrator training and is listed as the Support Contact for Licensee) may contact the Juvare Support Center pursuant to ESI's escalation support procedures. Such support procedures include contacting the Juvare Support Center via telephone, email and, when required, remote session support during Standard Business Hours and during Non-Standard Business Hours.

"Routine" Support Services includes assistance with the use and configuration of the software; assistance with identification and resolution of errors or defects assistance with application and use of new releases; general support for Board Builder and boards built by ESI or an ESI-certified technician; and access to WebEOC best practices, community-use status boards, "help" resources and other content made available through <https://www.juvare.com/customers/technical-support>, a "Licensee only" web forum. Support Services may be accessed by Licensee by calling the Support Center via (877) 771-0911 or by electronic mail at support@juvare.com (subject to updates and changes by ESI).

"Emergency" Support Services shall be available 24 hours per day, 365 days per year. Emergency telephone support includes any assistance needed by Licensee while Software is in use operationally, whether for actual incidents or exercises excluding assistance with GIS interfaces, mapping or products, which is licensed by a third-party vendor is available only during Standard Business Hours. Emergency Support Services may be accessed by calling the Support Center via (877) 771-0911 (subject to updates and changes by ESI).

Licensee may request performance of additional services by ESI. Such services shall be invoiced separately by ESI at ESI's then current rate for such services and Travel Expenses, if applicable.

Limitations on Support Services. ESI will provide Support Services for only the current version of any Software. Licensee is obligated to promptly implement all Software Updates, work arounds and error corrections provided by ESI.

Problems or Issues Not Covered by Support Services. The following issues/problems, and all issues or problems caused by the following, are not covered by Support Services:

1. Alterations to the Software not authorized by ESI;
2. Unless otherwise agreed in an Exhibit, Quote or Statement of Work hereto, customizations to the Software from consulting or professional services provided by ESI, including applications design or recommendations by Licensee;
3. Software problems created by Licensee negligence or fault or failure to comply with any specifications, policies, procedures or requirements for use of the Software, including, without limitation, those set forth in ESI's [Terms & Conditions](#);
4. Software problems caused by or related to a change in Licensee's service provider or internet access provider. Without limiting the generality of the foregoing, no reconfiguration of the Software due to a change in a service provider is covered under Support Services. Licensee should notify ESI prior to changing its service provider to enable ESI to provide configuration specifications to the new service provider. Any programming and configuration changes will be charged to Licensee at the then-current ESI's daily/hourly rates for such reconfiguration services;
5. Software problems that do not significantly impair or affect the operation of the Software;
6. Assistance with third party products; training; installation of plug-ins, boards or modules; API support; Board building; and
7. Licensee's failure to allow for the prompt implementation of error corrections, Software updates, or any work-around provided or made available by ESI (including, without limitation and applicable at all times, implementation of more recently released, generally available versions or releases of the Software made available through Support Services that contain corrections to the relevant error or where such error does not occur when using such more recently released version or release of the Software).

Licensee Responsibilities. Licensee agrees to limit its requests for Support Services after Standard Business Hours to occasions when the problem related to the Software is critical to Licensee's operation and cannot wait to be addressed until Standard Business Hours on the next succeeding ESI business day.

/End of Exhibit B

**EXHIBIT C TO END USER LICENSE AGREEMENT
FEES AND PAYMENT SCHEDULE**

Fees - Further to Quote No. Q-04516, dated March 30, 2021:

Year 1 Fees for Hosted Services, Term License, and Services				
ITEM NUMBER	DESCRIPTION	SALES PRICE	QTY	TOTAL PRICE
103-H-PRO-250	Hosted Services - WebEOC® Software – Professional (Up to 250 Users) 7/1/2021 - 6/30/2022	\$8,635.00	1	\$8,635.00
103-H-FUS-1	Hosted Services - WebEOC Fusion	\$18,150.00	1	\$18,150.00
103-H-MAP-1	Hosted Services - WebEOC Maps Add-On	\$4,345.00	1	\$4,345.00
101-T-AGIS-1	Term License - ArcGIS Extension	\$13,200.00	1	\$13,200.00
102-T-FUS-1	Support Services for WebEOC Fusion	\$18,150.00	1	\$18,150.00
102-T-RRDM-1	Support Services for Resource Request and Deployment Manager	\$3,836.00	1	\$3,836.00
102-T-DR-PRO	Support Services for WebEOC Professional Disaster Recovery	\$2,200.00	1	\$2,200.00
102-T-AGIS-1	Support Services for ArcGIS Extension	\$1,980.00	1	\$1,980.00
700-P-PMAGE-1	Consulting Services - Implementation of ArcGIS Extension On Prem (Client Hosted)	\$4,000.00	1	\$4,000.00
101-T-NPI-2	Term License for Client Hosted Non-Production Instance of WebEOC Software – Professional WebEOC instance will be fused to hosted WebEOC instance for backup purposes only.	\$7,500.00	1	\$7,500.00
102-T-NPI-2	Support Services for Term License for Client Hosted Non-Production Instance of WebEOC	\$1,650.00	1	\$1,650.00
102-P-MAP-1	Support Services for Maps Add-On	\$4,290.00	1	\$4,290.00
102-P-LEG	Support Services WebEOC Software	\$14,100.00	1	\$14,100.00
700-P-SSP-2	Consulting Services - Hosted Instance in Juvare Cloud Set up of ASP Hosted WebEOC & Fusion Environments (Hosted WebEOC Production and On Premises WebEOC Backup Copy) Please note, backup process is not automated.	\$20,000.00	1	\$20,000.00
Total Year 1 Fees for Hosted Services, Term License, and Services (plus taxes)				\$122,036.00

Year 2 Fees for Hosted Services, Term Licenses and Support Services				
ITEM NUMBER	DESCRIPTION	SALES PRICE	QTY	TOTAL PRICE
103-H-PRO-250	Hosted Services - WebEOC® Software – Professional (Up to 250 Users)	\$8,894.05	1	\$8,894.05
103-H-FUS-1	Hosted Services - WebEOC Fusion	\$18,694.50	1	\$18,694.50
103-H-MAP-1	Hosted Services - WebEOC Maps Add-On	\$4,475.35	1	\$4,475.35
102-T-FUS-1	Support Services for WebEOC Fusion	\$18,694.50	1	\$18,694.50
102-T-RRDM-1	Support Services for Resource Request and Deployment Manager	\$3,951.08	1	\$3,951.08
102-T-DR-PRO	Support Services for WebEOC Professional Disaster Recovery	\$2,266.00	1	\$2,266.00
102-T-AGIS-1	Support Services for ArcGIS Extension	\$2,039.40	1	\$2,039.40
102-T-NPI-2	Support Services for WebEOC Non-Production Instance (Client Hosted)	\$1,699.50	1	\$1,699.50
102-P-MAP-1	Support Services for Maps Add-On	\$4,418.70	1	\$4,418.70
102-P-LEG	Support Services for WebEOC Software	\$14,523.00	1	\$14,523.00
Total Year 2 Fees for Hosted Services, Term Licenses and Support Services (plus taxes)				\$79,656.08

Year 3 Fees for Hosted Services, Term Licenses and Support Services				
ITEM NUMBER	DESCRIPTION	SALES PRICE	QTY	TOTAL PRICE
103-H-PRO-250	Hosted Services - WebEOC® Software – Professional (Up to 250 Users)	\$9,160.87	1	\$9,160.87
103-H-FUS-1	Hosted Services - WebEOC Fusion	\$19,255.34	1	\$19,255.34
103-H-MAP-1	Hosted Services - WebEOC Maps Add-On	\$4,609.61	1	\$4,609.61
102-T-FUS-1	Support Services for WebEOC Fusion	\$19,255.34	1	\$19,255.34
102-T-RRDM-1	Support Services for Resource Request and Deployment Manager	\$4,069.61	1	\$4,069.61
102-T-DR-PRO	Support Services for WebEOC Professional Disaster Recovery	\$2,333.98	1	\$2,333.98
102-P-MAP-1	Support Services for Maps Add-On	\$4,551.26	1	\$4,551.26
102-P-LEG	Support Services for WebEOC Software	\$14,958.69	1	\$14,958.69
102-T-AGIS-1	Support Services for ArcGIS Extension	\$2,100.58	1	\$2,100.58
102-T-NPI-2	Support Services for WebEOC Non-Production Instance (Client Hosted)	\$1,750.49	1	\$1,750.49
Total Year 3 Fees for Hosted Services, Term Licenses and Support Services (plus taxes)				\$82,045.77

Payment Terms

For purposes of this Exhibit C, ESI shall invoice, and Licensee shall pay, the amounts set forth below according to below payment schedule:

- (i) The “**Total Year 1 Fees for Hosted Services, Term License, and Services**” set forth above in the amount of **\$122,036.00 USD** (plus applicable taxes) shall be invoiced by ESI to Licensee upon ESI’s receipt of this Agreement (executed by Licensee);
- (ii) Subsequent annual fees as set forth above shall be invoiced by ESI to Licensee so that such amounts are due and payable prior to the commencement of each applicable annual period; and
- (iii) No travel is expected to be performed by ESI pursuant to this Exhibit C.

All charges in this Agreement are exclusive of taxes and Travel Expenses incurred by ESI in the performance of services and are in addition to any charges set forth in any other Statement of Works or Exhibits or accepted quotes to the Agreement or in the Agreement. All invoices are due and payable thirty (30) days from the date of the invoice and interest fees/late charges (as provided in the Agreement) shall apply to any invoiced amounts not paid within the time periods provided in this Exhibit C or in the Agreement.

Please provide your billing contact:

Attention:

Licensee:

State of Tennessee, Department of Military

Address 1:

Address 2:

City:

State:

Zip Code:

Phone:

Email:

If Licensee is tax exempt, Licensee shall be responsible for providing all necessary documentation to show such tax-exempt status to ESI or to the taxing entity.

Work cannot be started and dates for services cannot be secured until the applicable initial payment has been received by ESI.

Pricing contained herein is based on configuration outlined above. Some items may not be sold separately. Pricing is valid for 90 days from the date of Quote date.

Notwithstanding anything to the contrary in this Exhibit C and the Agreement, Licensee has 120 days from execution of this Agreement by Customer to place all Software provided hereunder into production. Should Licensee fail to place all Software into production within such 120-day period, all unpaid amounts set forth above shall be immediately due and payable by Licensee to ESI and the implementation shall be deemed complete as of the end of such 120-day period. Licensee may then provide ESI written notice when Licensee is ready to implement the Software. ESI shall not

have any obligations for warranties applicable to the Software and services provided hereunder, and Support Services for such Software, shall not apply to issues experienced by Licensee, to the extent caused by Licensee's use of such Software prior to ESI's completion of the implementation of the Software.

/End of Exhibit C

EXHIBIT D TO END USER LICENSE AGREEMENT
HOSTED SERVICES

1. Definitions. For the purposes of this Exhibit, the following words have the meaning set forth below:
 - a. **"Juvare Cloud"** means the shared hardware environment for the purpose of hosting and maintaining software and data on behalf of ESi's customers; may also be referred to as the application service provider or the "ASP."
 - b. **"Hosted System"** means the combination of hardware, software and networking components used by the application service provider to deliver the Hosted Services.
 - c. **"Hosted Services"** means the installation and management of specified software applications in the Juvare Cloud shared environment on behalf of a ESi customer and exclusively for the benefit of permitted users of the Software.

All other capitalized terms in this Exhibit D shall have the same meaning set forth in the Agreement, except where otherwise stated in this Exhibit.
2. Scope of Services. ESi shall provide the following services to address the Software hosting needs:
 - a. ESi shall provide Hosted Services to Licensee according to the provisions set forth in the Agreement and this Exhibit. ESi shall notify Licensee promptly upon creation of Hosted Services account and provide Licensee with all information required to access such account. ESi, at its sole discretion, may provide and maintain such Hosted System and/or deliver such Hosted Services internally or through a qualified subcontractor.
 - b. ESi shall provide and maintain the facilities, hardware, and networking components as it sees fit to provide access to the Juvare Cloud for the benefit of Licensee.
 - c. ESi shall perform, at its convenience and after notice to Licensee, scheduled updates of the Juvare Cloud as ESi or its hosting subcontractor sees fit. Such updates shall be scheduled to enable the simultaneous update to all of ESi-hosted customers.
 - d. ESi or its hosting subcontractors shall be entitled to perform, as needed, emergency security updates to the Hosted System to protect the Juvare Cloud or the subcontractor's hosted environment from newly identified and widespread threats to the internet or internet-based services posed by worms, viruses and Trojans, or to address other vulnerabilities, with little or no notice to Licensee.
 - e. ESi shall provide and maintain a redundant shared environment of the Juvare Cloud at a location that is geographically separated from its primary ASP Environment to ensure continuity of Software access and operation in the event of any unforeseen outage, disaster or other event that may interrupt service at the primary location of the Juvare Cloud. Failover to the redundant shared environment of the Juvare Cloud is a manual process and service will be activated by ESi immediately upon notification of malfunction, unavailability or failure of primary shared environment of the Juvare Cloud.
 - f. ESi will notify (via ESi's Support Center) the Licensee of any planned service outages, i.e., for the purpose of performing Software updates or testing, or other inability to perform the services outlined in this Agreement.
 - g. ESi shall schedule, perform and maintain a duplicate ("backup") record of Licensee Data within the Juvare Cloud. ESi shall perform hourly SQL transaction log backups and daily full backups. Data backups are limited to SQL database server files (i.e., those files having a .mdf or .ldf file extension). Data backups shall be retained on-site for four weeks.
 - h. In addition to the Support Services pursuant to the Agreement and Exhibit B, ESi shall provide Licensee with Support Services for the Hosted Services which include assistance with problems related to the Juvare Cloud, data access, Hosted System access, or similar problems. Such Support Services for the Hosted Services may be accessible to Licensee via the same contact information provided to Licensee for Support Services; provided, however, services to be provided by ESi under this Exhibit and the Agreement do not include assistance with third party products; training; installation of plug-ins, boards or modules; API support; or board building; or repair or correction of errors, defects or other operational or performance defects caused by Software configuration, modification, enhancement or programming provided by any party other than ESi or an ESi-certified technician. Any professional services described in this Section 2(h), or services required to repair or correct the errors and defects described in this Section 2(h), shall be provided on a fee-for-services basis at rates consistent with the ESi published price list in effect at the time services are rendered.
 - i. Licensee may request performance of additional services by ESi. Such services shall be invoiced separately by ESi at the current published rate for labor and actual costs for materials and travel, if applicable.
3. Licensee Obligations
 - a. The Licensee shall maintain, at Licensee's expense, a secure high-speed internet connection through which to access its hosted Software.

- b. The Licensee shall appoint a designated point of contact and two alternate points of contact for its interactions with ESI. Licensee shall provide ESI with the name, job title, physical address, telephone number, facsimile number and electronic mail address for each of the contact persons. Licensee shall keep such contact information up-to-date and promptly notify ESI, in writing via electronic mail, of any changes.
 - c. The Licensee shall use reasonable security precautions in connection with the use of Services provided under this Agreement.
 - d. The Licensee is responsible for any and all use and access to the Hosted System and Hosted Services by its employees, agents, contractors and permitted users of the Software and Hosted Services.
 - e. The Licensee shall make best efforts to notify ESI in writing, via electronic mail or facsimile, of any planned non-emergency use of its Software, such as the occurrence of training sessions, drills and exercises, to aid ESI with the planning of any scheduled outages.
 - f. The Licensee shall promptly notify ESI Support Center of any identified Hosted Services outage that impairs Licensee's access to the Software so that ESI may manually activate the redundant shared environment of the Juvare Cloud and immediately commence work to restore service to the primary shared environment of the Juvare Cloud.
 - b. The Licensee shall not conduct any load testing, performance testing or any other test of the Hosted System which may degrade performance or limit or adversely impact availability of the Juvare Cloud for other customers.
4. Limitations on Use of Hosted Services.
- a. Licensee's usage of the Hosted Services in the Juvare Cloud is subject to capacity and performance constraints. Monthly active users do not equal maximum concurrent users. Concurrent user capacity will be variable based on Juvare Cloud load.
 - b. Access to the Hosted System may not be rented, leased, sold, sub-leased, assigned or otherwise transferred for value or for no value by Licensee to any third party.
 - c. Hosted System and Hosted Services are provided to support the Software which is an information management tool. Hosted Services are not guaranteed to be fault-tolerant or to provide fail-safe performance. Hosted Services are not appropriate for use in ultra-hazardous environments where failure of the Hosted System or the Juvare Cloud may lead to bodily injury, death or destruction of property.
 - d. Installation of Software applications in the Juvare Cloud is limited to the Software included in the Subscription to Licensee by ESI and Software supplied by ESI either as a component of the Hosted System or to support delivery of Hosted Services.
 - e. ESI shall only be responsible for performance of components of the Hosted System and Services under its control. ESI shall not be responsible for performance deficiencies caused by processes, hardware and software beyond its control including, but not limited to, information transmission delays due to excessive internet traffic, internet outages, or failure of Licensee to perform its obligations under this Agreement.
 - f. The warranties set forth in the Agreement shall be void if any breach of this warranty or failure of the hosting environment or Software is caused by unauthorized use, improper use or modification to Software made by Licensee or its authorized users.

/End of Exhibit D

STATEMENT OF WORK No. 1

1.0 **Services Overview**

ESi will provide Licensee with services needed to assist Licensee with the creation of a hosted solution which is connected via WebEOC® Fusion to a local (Licensee hosted) WebEOC Instance. The main production Instance will be hosted in the Juvare Cloud, with a second production Instance that will be installed/hosted on Licensee's equipment at Licensee's premises. This on-premise production Instance will be a separate, stand-alone instance of WebEOC (with unique login and password credentials). In the event that the Licensee is unable to connect to the ESi hosted production Instance, Licensee and its Users may use the stand-alone, on premises Instance.

2.0 **WebEOC® Migration to ASP Hosting**

ESi will provide the following services to assist Licensee with the duplication of Licensee's current locally hosted instance of the WebEOC® Software License to the Juvare Cloud:

- 2.1 ESi will setup a hosted Instance of the WebEOC® Software, latest version at time of Installation, in the Juvare Cloud. The following Modules will be installed and configured as part of this effort:
 - 2.1.1 ESi WebEOC® Software
 - 2.1.2 ESi WebEOC® Fusion Software
 - 2.1.3 ESi WebEOC® Maps Add-On Software
 - 2.1.4 ESi WebEOC® Resource Request and Deployment Manager Software
 - 2.1.5 ESi WebEOC® ArcGIS Extension
 - 2.1.6 Azure File Sharing site to facilitate data transfers.
- 2.2 As part of this effort, ESi will work with Licensee to establish a mutually agreeable URL (e.g., <https://tema.webeocasp.com>, for example purposes only) for use and deployment of Licensee's migrated hosted Instance of the WebEOC Software.
- 2.3 ESi will work with Licensee's IT personnel to copy and migrate Licensee's current locally hosted WebEOC database to Licensee's new hosted Instance of the WebEOC Software in the Juvare Cloud, subject to the following:
 - 2.3.1 Licensee is responsible for creating a physical backup of its current WebEOC database from its on-premise Instance.
 - 2.3.2 ESi will work with Licensee IT personnel to transfer such backup copy that ESi receives from Licensee, and ESi will load and migrate the backup copy of Licensee's database into the new hosted Instance of the WebEOC Software in the Juvare Cloud.
 - 2.3.3 Licensee will conduct regular testing of its on-premise Instance of the WebEOC Software License.
 - 2.3.4 Licensee is responsible for replicating any Software Updates to its on-premise Instance within two (2) weeks of the date such Software Updates are made to the hosted Instance of the WebEOC Software in the Juvare Cloud.
 - 2.3.5 Licensee understands that WebEOC Fusion only synchronizes the board data. All other data and board features are not synchronized and will have to be manually updated.
 - 2.3.6 Licensee understands that Users, Groups, and Positions have to be maintained in both versions by the Licensee.

3.0 **Business Process Assumptions**

- a) Both, the hosted and on-premise, instances of WebEOC will behave like any two instances of WebEOC that are sharing boards via WebEOC Fusion.
- b) When both instances have network connectivity, messages will be shared between properly configured published and subscribed boards in near real time. When one instance does not have network connectivity, the data entered into that instance will queue locally until network connectivity is reestablished.
- c) During Licensee's network outages, local Users will enter data and interact within the on-premise instance, while remote Users will interact with the hosted Instance.
- d) Boards that have been published and subscribed to via WebEOC Fusion will share data when network connectivity is reestablished.
- e) The hosted and on-premise, instances of WebEOC are separate and independent throughout this process. Users, groups, incidents and all aspects of administrations are separate and are not ever synchronized, automatically or manually, between the two Instances regardless of the state of network connectivity.
- f) There will be no data back-up or failover, automatically or manually, between the two Instances.
- g) Licensee needs to consider a potential split-brain scenario where both Instances are being used. Rules around which data should control when the systems come back together must be established up front.

4.0 Fusion Services

- a) Fusion will have a message queue of what was delivered.
- b) Fusion is first in, first out. Licensee is aware that any messages that are written on the same record, the first record will be prioritized over any record that is written after that. This applies when there is a loss of connection with the hosted server.

5.0 Project Assumptions

- a) Licensee is not using Browser Compatibility Mode.
- b) Licensee can access Zoom Video or similar web conferencing tool for any remote meetings and validation.
- c) Licensee will provide a named Project Manager who will serve as the primary point of contact (“**Licensee POC**”) for ongoing project planning and project communications efforts.
Project Manager Name: _____
Phone number: _____
Email: _____
- d) Licensee will sign ESI’s Implementation Completion Form, provided by ESI to Licensee, within 14 days of the completion of the Services by ESI.
- e) The Services provided by ESI under this SOW shall be conducted during Standard Business Hours (as defined in the Agreement) at the Fees set forth in the State Contract.
- f) Scheduling of resources and Services will be provided upon receipt of a valid purchase order. The dates for the performance of all Services hereunder are subject to mutual written agreement of the parties.
- g) If Licensee requests that the project to be delayed for more than 30 calendar days once project schedule has been agreed upon, Licensee must notify ESI in writing of such request. When Licensee is ready to reengage on project, written notice must be provided to ESI. All project resources will be unassigned from the project at the time project is put on hold. At time of reengagement, ESI will work with Licensee to determine a new, mutually agreeable project schedule. The original ESI project team is not guaranteed to be available for the new project schedule.
- h) On-site Services by ESI resources are **not** planned or expected for purposes of this SOW
- i) ESI shall not be obligated to provide any Services hereunder on or after one (1) year from the SOW Effective Date. ESI will provide not more than ninety-six (96) people hours of labor assistance under this SOW. Any unused man hours of Services purchased by Licensee pursuant to this SOW will not be carried forward or available for use under other statements of work with ESI, and no paid amounts will be refunded. A change request may be used to extend these Services prior to the expiration date; provided, however, such change request is not enforceable unless and until executed by both parties.
- j) Licensee shall provide ESI with remote access to the Software thereto as a condition to the provision of all Services hereunder.
- k) Licensee is responsible for the dissemination or modification of process documentation.
- l) Any additional man hours of Services required to be performed by ESI as a result of Licensee’s failure to comply with its obligations hereunder, Licensee delays, or Licensee increases in the scope of Services under this SOW shall be invoiced to Licensee at Contract rate
- m) Licensee is responsible for ensuring that its server, hardware or other equipment for the on-premise Instance is capable of hosting the latest version of WebEOC® Software, including all Software Updates.

6.0 Services Engagement

Your ESI Project Manager will engage as follows:

- a) Upon ESI’s receipt of the Agreement, with this SOW incorporated, signed by the Licensee, the ESI Project Manager will contact the Licensee POC to schedule a project kick-off call and schedule the dates for the Services.
- b) Any project related calls will be scheduled through the ESI Project Manager with the Licensee POC.
- c) The ESI Project Manager will provide the Licensee POC with the overall project timeline and provide email status updates.
- d) Once the implementation is complete the ESI Project Manager will coordinate a closeout call with the Licensee POC to finalize the engagement and send the Implementation Completion Form for signature by Licensee.

7.0 Delivery

Services will be deemed delivered 24 hours after completion of the Services. Licensee will have fourteen (14) calendar days from receipt to review and identify defects. ESI shall perform the Services in a professional and workmanlike manner. Provided that Licensee provides ESI with written notice within 14 days of the date of performance of Services that fail to comply with the foregoing, ESI shall re-perform such Services in compliance with this SOW at no additional charge; provided, however, delays or changes in scope will incur

additional man hours of services by ESi and such additional man hours of services shall be invoiced as set forth in State Contract.

8.0 Services Deliverables

The following deliverables will be provided to Licensee as part of the Services identified in this SOW:

- a) One hosted production Instance of the WebEOC® Software – Professional;
- b) Software License for the Licensee hosted on-premise WebEOC Software – Professional;
- c) Installation and Configuration of Maps Add-On for both Instances (ESi will provide Services to Licensee assist in setting up 10 Map Layers);
- d) Installation and Configuration of ArcGIS Extension on both Instances;
- e) Hosted Fusion Instance;
- f) WebEOC RRDM Module;
- g) File Sharing Site to facilitate data transfers; and
- h) No other deliverables.

9.0 ESi Contact Information

Sales	Professional Services	Business Solutions
Amber Thompson	Glenn Itliong	Oliver Oetterer
Inside Sales Representative	Professional Services, Program Manager	Director, Business Development
(470) 279-6479	650-207-0395	203-491-8650
Amber.thompson@juvare.com	glenn.itliong@juvare.com	oliver.oetterer@juvare.com

APPENDIX A – Change Order

Change Number	Change Type	Description of Change	Requestor	Date Submitted	Date Approved	Status

Special Notes or Comments	
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ESi Approvals

Position	Name	Signature	Date	Approved (Yes/No)

Licensee Approvals

Position	Name	Signature	Date	Approved (Yes/No)



Invitation to Bid (ITB)
For WebEOC for Tennessee Emergency Management Agency
Event # 34101-11937

- 1.1. Section 1 -- Background Information
- 1.2. Tennessee Emergency Management Agency is seeking a contract to be utilized for managing records, requests, incidents and resources.
- 1.3. **Accommodation for People with Disabilities.** Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-response conference or other scheduled function should contact the Solicitation Coordinator to discuss any auxiliary aids or services needed. Such contact should be made no less than three (3) business days prior to the public meeting to allow time for the Solicitation Coordinator to provide needed aids or services.
- 1.4. **Responses Due.** The response must be received by the State on or before the date and hour designated for the response opening. Responses that are submitted untimely shall be rejected.
- 1.5. Award Criteria
- 1.6. **Single Award -- Lowest Cost.** A single contract will be awarded for all line items to the respondent whose response meets the requirements and criteria set forth in this ITB at the lowest cost.
- 1.7. Standard Terms of the Solicitation
- 1.8. **Respondent Registration.** Pursuant to Tenn. Code Ann. § 4-56-105 all respondents must be registered prior to the issuance of a contract or a purchase order. Respondents can register online at the State of Tennessee Supplier Portal:

https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST
- 1.9. **Respondent's Ability to Perform.** The State shall have the right to require evidence of the respondent's ability to perform the services or deliver the goods required

pursuant to the terms and conditions of this ITB.

- 1.10. **Quality of Workmanship and Materials.** Unit price responses are requested on goods or services that equal or exceed the specifications, unless the specifications limit the dimensions, brands, or model of goods or services. The absence of detailed specifications or the omission of detailed descriptions shall mean that only the best commercial practices and only first quality goods and workmanship shall be supplied.
- 1.11. **Performance.** The respondent who is awarded a contract will be responsible for delivering the goods or providing the services set out in this ITB. All goods or services are subject to inspection and evaluation by the State.
- 1.12. **Clarifications.** The State reserves the right to conduct clarifications or negotiations with one or more respondents. All communications, clarifications, and negotiations shall be conducted in a manner that is fair and transparent.
- 1.13. **Negotiations.** The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.
- 1.14. **Response Cancellation and Rejection.** The State may cancel this ITB in its entirety and reissue it in whole or in part.

The State may reject any or all responses in its sole discretion. Additionally, the State may reject a response that: (a) qualifies the offer to provide goods or services as required by this ITB; (b) proposes alternative goods or services unless expressly requested by this ITB; (c) involves collusion, consultation, communication, or agreement among respondents; (d) includes information the respondent knew or should have known was materially incorrect; or (e) does not comply with the terms, conditions, specifications, or performance requirements of this ITB.

After the State opens the responses, no price changes shall be permitted except pursuant to target pricing or best and final offer negotiations as specified in this ITB.

- 1.15. **Communications and Contacts.** Prospective respondents must direct communications concerning this ITB to the following person designated as the Solicitation Coordinator:

Sharon Pope
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville TN 37243-1102
615-741-9588
Sharon.pope@tn.gov

Unauthorized contact about this ITB with employees or officials of the State of Tennessee except as detailed in this ITB may result in disqualification from consideration under this procurement process. Notwithstanding the foregoing, respondents may alternatively contact:

Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran owned, businesses owned by persons with disabilities and small businesses as well as general, public information relating to this ITB (visit <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html> for contact information); and

The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and associated federal regulations:

Helen Crowley
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102
615-741-1035
Helen.Crowley@tn.gov

- 1.16. **Responses Submitted by Mail.** If submitting a response by mail: (1) all prices must be typed or written in ink on the "Line Details" portion of this ITB; (2) any corrections, erasures, or other alterations to prices must be initialed by the respondent; and (3) the response shall be manually signed by the respondent in ink. Each individual response must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the response opening date. Responses should be mailed in a properly labeled sealed envelope to the following address:

Bidder Services
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102.

Failure to comply with these requirements may result in rejection of the response.

- 1.17. **Models Included in Response.** All goods identified in the response must be new, of current manufacturer production, and must have been formally announced by the manufacturer or provider of services as being commercially available as of the date of response opening. Goods may include internal refurbished or reconditioned

components normally used in the manufacturing process and deemed and warranted and sold as new equipment by the manufacturer.

- 1.18. **Respondent Certification.** By signing or electronically submitting the response, the respondent agrees to the terms and conditions of this ITB and certifies that all goods or services included in the response meet or exceed the Scope or Specifications of this ITB. The respondent agrees that, if it is awarded a contract, it will deliver goods or services that meet or exceed the specifications in this ITB.
- 1.19. **Exceptions or New Terms or Conditions.** Exceptions to terms and conditions or new terms and conditions proposed by the respondent that vary from this ITB may, in the discretion of the State, render the response nonresponsive. A response deemed nonresponsive will not be considered for an award of a contract.
- 1.20. **Conflict of Interest.** The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this ITB:
 - a. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 - b. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
 - c. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 1.21. **Specifications Govern.** Brands or model numbers identified in the specifications of this ITB are deemed to meet all written specifications. In the event of a conflict between specified brands and models and the written specifications, the conflict shall be resolved in favor of the written specifications.
- 1.22. **Firm Offer.** The response constitutes a firm offer that is irrevocable for ninety (90) days. An award of a contract shall, subject to necessary State approvals, be binding on the respondent without any further action by the respondent.
- 1.23. **F.O.B. Destination.** Respondent's prices shall include delivery of all items F.O.B. destination or as otherwise specified by the State.
- 1.24. **Tax Exemption.** The State of Tennessee is exempt from local, state, and federal excise taxes. These taxes shall not be included in respondent's prices. The successful respondent shall pay all taxes lawfully imposed on it with respect to any goods or services delivered in accordance with this ITB.

- 1.25. **Prompt Pay Discount.** Any prompt pay discounts offered by respondents shall be extended to all authorized users of the contract.
- 1.26. **Fixed Discount or Surcharge.** The percent discount or surcharge per line item must be fixed for the contract's term.
- 1.27. **On-site Inspection.** All respondents should visit the site to take exact measurements and examine the premises to become familiar with any problems or unusual circumstances. No allowances will be made by the State for errors in quotations due to any respondent not visiting the site prior to submitting their response. Respondents shall be responsible for their own measurements.
- 1.28. **Used Equipment.** When this ITB authorizes offers of used items, no used item is acceptable if serial numbers or any other manufacturer's identifying label or markings have been removed, obliterated, or changed in any way.
- 1.29. **Tennessee Contractor License.** Respondents shall be properly licensed as of the date it files a response to this ITB and shall provide evidence of compliance with all applicable provisions of the Contractors Licensing Act of 1994, Tenn. Code Ann. § 62-6-101, *et seq.* in providing the specified information within this ITB. Any response that does not comply with Tenn. Code Ann. § 62-6-119, when applicable, shall be rejected.
- 1.30. **Purchase of Materials for Highways or Roadways.** Respondents must comply with Tenn. Code Ann. § 54-5-135 when purchasing materials used for highway or road construction, resurfacing, or maintenance.
- 1.31. **Energy Star Products.** Any goods ordered by the State must be Energy Star certified and meet applicable Energy Star specifications for energy efficiency.
- 1.32. **Response Requested for Software Products.** Unit prices are requested for software products that meet the State's requirements. Alternative software products will not be accepted and, if included, may result in rejection of the response. Respondent must submit and supply throughout the contract term the most recent version or release available unless otherwise specified in this ITB. All responses must include full use license rights for the term of the contract or as otherwise specified in the contract. The State will not accept or make payment for outdated software versions or releases. Responses shall include software maintenance and support services when required in the specifications.
- 1.33. **Safety of Chemical Products.** All respondents awarded a contract must maintain, for all of its chemical products available under this Contract, a Safety Data Sheet ("SDS") on the chemical manufacturer's website. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is accessible to the public, free of charge.
- 1.34. **Professional Licensure.** All persons, agencies, firms, or other entities that provide legal or financial opinions, which a respondent provides for consideration and

evaluation by the State as a part of a response to this ITB, shall be properly licensed to render such opinions. Upon submitting the response, the respondent (and respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any respondent to submit evidence of proper licensure.

- 1.35. **Department of Revenue Registration.** Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this ITB. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following: https://tntap.tn.gov/eservices/_/#1
- 1.36. **Prohibition of Illegal Immigrants.** Any respondent awarded a contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.
- 1.37. **Inspection of Procurement File.** All respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested respondents should contact the Solicitation Coordinator following the response opening date or once the file is open for the seven (7) day inspection period. A "Notice of Intent to Award" letter will be sent to all respondents detailing which respondent(s) has been recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the procurement file will be provided to the respondent.
- 1.38. **Protest by Respondent.** Pursuant to Tenn. Code Ann. § 12-3-514, any actual respondent may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows: <https://www.tn.gov/generalservices/procurement.html>. If a written protest and a protest bond are not received by the end of the seven-day period to protest then the Solicitation Coordinator will proceed with the contract award.

GOVERNOR'S OFFICE OF DIVERSITY BUSINESS ENTERPRISE

Efforts to Achieve Diversity Business Participation

The Governor's Office of Diversity Business Enterprise ("Go-DBE") is the State's central point of contact to attract and assist minority-owned, woman-owned, service-disabled veteran-owned, disabled-owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)

Businesses that are a continuing, independent, for-profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

Service-Disabled Veteran Business Enterprise (SDVBE)

"Service-disabled veteran-owned business" means a service-disabled veteran-owned business located in the State of Tennessee that satisfies the criteria in Tenn. Code. Ann. § 12-3-1102(8). "Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

Small Business Enterprise (SBE)

"Small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

"Disabled Business Enterprise (DSBE)

"Disabled Business Enterprise" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe-/program-eligibility.html>

Instructions

As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan below. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at:

<https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215>

directory or by calling Go-DBE toll free at 866-894-5026.

RESPONDENT'S DIVERSITY UTILIZATION PLAN

Respondent's Company Name:		
Solicitation Event Name:	Event Number:	
Respondent's Contact Name:	Phone: ()	Email:
Does the Respondent qualify as the diversity business enterprise? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, which designation does the Respondent qualify? <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> SDVBE <input type="checkbox"/> SBE		
Certifying Agency:		

Estimated level of participation by DBEs if awarded a contract pursuant to this ITB:

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	% of Contract	Estimated Amount	MBE/ WBE/ SDVBE/ SBE / DSBE Designation	Currently Certified (Yes or No)
Business Name:				
Contact Name:				
Contact Phone:				
Business Name:				
Contact Name:				
Contact Phone:				

If awarded a contract pursuant to this ITB, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans and persons with disabilities. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>

We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: _____

Date: _____

Printed Name and Title of Signatory _____



1.39. SCOPE:

- 1.40. **Scope.** The Contractor shall provide all goods or services and deliverables as required, described, and detailed in the Scope or Specifications set forth in the Invitation to Bid and meet all service and delivery timelines as specified by the Invitation to Bid.

1.41. Warranty Clauses:

- 1.42. **Warranty.** Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge. Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- 1.43. **Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

1.44. TERM OF CONTRACT:

1.45. Term of Contract.

1.46. This Contract shall be effective on November 01, 2021 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

1.47. **Term Extension.** The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option.

1.48. PAYMENT TERMS AND CONDITIONS:

1.49. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed Two Hundred Ninety-Three Thousand Six Hundred Twenty-Eight Thousand and Seventy Three Cents (\$293,628.73) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

1.50. **Compensation Firm.** The prices identified in this Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The prices identified includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

1.51. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

1.52. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in this Contract. Contractor shall submit invoices and necessary supporting documentation to the State Agency that requested goods or services no later than thirty (30) days after goods or services have been provided.

a) Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

1. Invoice number (assigned by the Contractor);
2. Invoice date;
3. Contract number (assigned by the State);
4. Purchase order number (assigned by the State);
5. Customer account name: The State of Tennessee;
6. Customer account number (assigned by the Contractor to the above-referenced Customer);

7. Contractor name;
8. Contractor Tennessee Edison supplier ID number;
9. Contractor contact for invoice questions (name, phone, or email);
10. Contractor remittance address;
11. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
12. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
13. Applicable payment methodology of each good or service invoiced;
14. Amount due for each compensable unit of good or service; and
15. Total amount due for the invoice period.

b) Contractor's invoices shall:

1. Only include charges for goods delivered or services provided as described in this Contract and in accordance with payment terms and conditions set forth in this Contract;
2. Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
3. Not include a line item for Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal Property taxes, or income taxes; and
4. Include shipping or delivery charges only as authorized in this Contract.

The timeframe for payment (or any discounts) begins only when the State is in receipt of an undisputed invoice that meets the minimum requirements of this Section.

- 1.53. **Payment of Invoice.** A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- 1.54. **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with this Contract, to not constitute proper compensation for goods delivered or services provided.
- 1.55. **Deductions.** The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- 1.56. **Prerequisite Documentation.** The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
 - a) The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

- b) The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

1.57. **MANDATORY TERMS AND CONDITIONS:**

- 1.58. **Substitute Items Offered by the Contractor.** In the event that an awarded item is no longer being manufactured or is replaced by a functionally equivalent item with superior technological features to the item being replaced, Contractor may offer a substitute item ("Substitute"). The Substitute shall: (a) meet or exceed the functional, technical, and performance characteristics of the item being replaced; (b) not exceed the cost of the item being replaced by more than ten percent (10%); and (c) be available for order on the date Contractor requests to make the substitution. Contractor shall not make any substitutions for awarded items without the State's prior, written approval. Contractor shall submit any proposed substitutions to the Central Procurement Office and include sufficient information to show that criteria (a) -- (c) above are met. The Central Procurement Office may request sample Substitutes for inspection or testing.
- 1.59. **Purchase Order Release.** Agency submission of a purchase order to Contractor authorizes Contractor to deliver goods or provide services.
- 1.60. **Delivery.** Contractor shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. All quotations shall be F.O.B. destination.
- 1.61. **Required Approvals.** The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- 1.62. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email. All communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address or email address as stated below or any other address provided in writing by a party.

The Contractor:

ESI Acquisition, Inc.
Oliver Oetterer
235 Peachtree Street NE
Suite 2300
Atlanta, GA 30303

oliver.oetterer@juvare.com
Telephone Number

State of Tennessee:

Jason Laney
Department of Military, Tennessee Emergency Management Agency
3041 Sidco Drive
Nashville TN 37204
615-532-8105
Jason.laney@tn.gov

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- 1.63. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.
- 1.64. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- 1.65. **Termination for Convenience.** The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- 1.66. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

1.67. **Assignment and Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

1.68. **Conflicts of Interest.** The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

1.69. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.70. **Prohibition of Illegal Immigrants.** The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-.html>, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b) Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from

subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c) The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- 1.71. **Records.** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- 1.72. **Monitoring.** The Contractor's activities conducted and records maintained, pursuant to this Contract, shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- 1.73. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.
- 1.74. **Strict Performance.** Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- 1.75. **Independent Contractor.** The parties shall not act as employees, partners, joint ventures, or associates of one another. The parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party are not employees or agents of the other party.
- 1.76. **Patient Protection and Affordable Care Act.** The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report

health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

- 1.77. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- 1.78. **Limitation of Contractor's Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- 1.79. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

1.80. **HIPAA Compliance.** The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a) Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b) Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c) The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

1.81. **Tennessee Consolidated Retirement System.** Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

1.82. **Tennessee Department of Revenue Registration.** The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 -- 608. Compliance with applicable registration requirements is a material requirement of this Contract.

1.83. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department

or agency;

- b) have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c) are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d) have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- 1.84. **Force Majeure.** "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- 1.85. **State and Federal Compliance.** The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.

- 1.86. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 -- 408.
- 1.87. **Entire Agreement.** This Contract is complete and contains the entire understanding between the parties relating to its subject matter, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.
- 1.88. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- 1.89. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- 1.90. **Incorporation of Additional Documents.** Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a) any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b) this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
 - c) any clarifications of or addenda to the Contractor's response seeking this Contract;
 - d) the Invitation to Bid, as may be amended, requesting responses in competition for this Contract;
 - e) any technical specifications provided to respondents during the procurement process to award this Contract; and,
 - f) the Contractor's response seeking this Contract.
- 1.91. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

1.92. Insurance Requirements:

- 1.93. **Insurance.** Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

1.94. Workers' Compensation and Employer Liability Insurance.

- a) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
- b) Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or
- c) In an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- d) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 -- 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - 1. The Contractor employees fewer than five (5) employees;
 - 2. The Contractor is a sole proprietor;
 - 3. The Contractor is in the construction business or trades with no employees;
 - 4. The Contractor is in the coal mining industry with no employees;
 - 5. The Contractor is a state or local government; or
 - 6. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

1.95. Commercial General Liability Insurance.

- a) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- b) The Contractor shall maintain bodily injury/property damage with a combined single-limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage,

including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

- 1.96. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
- 1.97. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.
- The obligations set forth in this Section shall survive the termination of this Contract.
- 1.98. SPECIAL TERMS AND CONDITIONS:
- 1.99. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- 1.100. **Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- 1.101. **Intellectual Property Indemnity.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

- 1.102. **Extraneous Terms and Conditions.** Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid, and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned on the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- 1.103. **Use Warranty.** Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.
- 1.104. **Software License Warranty.** Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- 1.105. **Software Support and Maintenance Warranty.** Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

a. **Contractor Hosted Services Confidential Data, Audit and Other Requirements.**

"Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:

- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
- (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
- (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:
<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.

- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT

service due to a major incident: [23 HOURS / 59 MINUTES]

- ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: [23 HOURS / 59 MINUTES]

- (2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

- 1.106. **Personally Identifiable Information.** While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized

Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

1.107. **Additional Lines, Items or Options.** At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.

- a) After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
 1. The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 2. Any pricing related to the new lines, items, or options;
 3. The expected effective date for the availability of the new lines, items, or options; and
 4. Any additional information requested by the State.
- b) The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
- c) To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
- d) Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.